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THE
C A S E
O F
I M P O T E N C Y
D E B A T E D,

In the late Famous
T R Y A L at P A R I S;
B E T W E E N

The Marquis de GESVRES and his
Lady, Mademoiselle de MASCRANNY;
who, after Three Years Marriage, commenced a
Suit against him for I M P O T E N C Y.

Containing,

- I. The Pleadings at large on both Sides.
- II. The Reports of the King's Physicians and Surgeons appointed to search the Parties.
- III. A Collection of the most authentick parallel Cases upon this Head, both ancient and modern, confirmed by the Authority of Papal Decrees, Councils, Fathers, the Judgments of the best Canonists, Civilians, and Common Lawyers.

V O L U M E I.

The Second Edition.

L O N D O N :

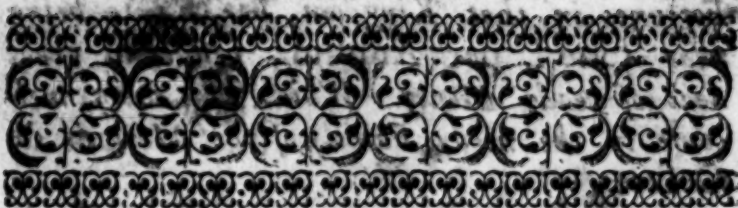
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Advertisement

BY THE

TRANSLATOR.

THE following Sheets contain a faithful Account of the Proceedings between the Marquis de Gesvres and his Lady. This Tryal has been more taken Notice of all over Europe, than any Case of the same Nature hitherto known, the Hearing having continued for above Twenty Days.

And because the English Readers may be desirous to know somewhat concerning the Parties, I can assure them that the Marquis de Gesvres is not only descended from one of the best Families in France, but is likewise a very handsome, jolly, and seemingly compleat Gentleman: But there's no trusting to Looks; as may be too well testified by his unhappy Spouse, who, tho' not equal to him in Dignity of Blood, yet was one of the greatest
For-

Advertisement by the Translator.

Fortunes in that Kingdom, her Estate being near 4000 l. per Annum, besides a great deal of ready Money : Which was very welcome to the needy Family of the Marquis de Gesvres.

We hear that his Father, the Duke de Tresmes (present Governour of Paris,) by his Interest in Madam Maintenon, (from whom, 'tis said, he received Favours before his Most Christian Majesty had conferred any on that Lady,) and by telling the King that he himself was Impotent till he attained to about the Age of 25 Years, his Majesty has, upon that Consideration, permitted the Marquis de Gesvres to cohabit with his Lady till he arrives at the same Period, and then to try what he can do in Discharge of his Conjugal Duty.

All that I have farther to add, is, that a peculiar Care has been taken in this Translation to come up to the Spirit of the † Original ; and I must own, that the Pleaders so well discharged their Office, (especially those for the Lady) that it is no easy Matter to do them Justice ; but since we stand in little Need of borrowing Politeness of Expression from any neighbouring Nation, I hope the Reader will not find many Faults of that kind to atone for.

† The French Copy was printed at Rohan, but the whole Impression (except a few Books which got into private Hands) was destroyed.

THE



**THE
CASE
Of the LADY**

Magdalen-Emilia de Mascranny;
Who sues for a Dissolution of her Mar-
riage with the Marquis DE GESVRES,
on account of Impotency.

PLEA against the said Marquis.
GENTLEMEN,



If this Cause seems considerable,
'tis only to such as suffer them-
selves to be dazzled by the Im-
portance of the Question, or the
Quality of the Parties. For they
who will judge of it according to
its own mere Merit, will be so far
from thinking it a Cause of great
Extent or Difficulty, they'll scarce believe, that be-
fore such penetrating Judges as you are, Gentlemen,
there's any Occasion for Council.

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THE

THE whole of the Question is, Whether, in an Accusation for Impotence, it is not according to the Rules to inspect the Body of the Wife, who swears she's a Virgin, when the Searchers, who inspected the Husband, are not able to determine what he is. When, to remove their Doubts, they have either insinuated or declared, that a Visit upon the Wife was necessary; When, in a word, the Husband affirms he has consummated his Marriage an infinite Number of Times, whilst the Wife denies, that such pretended Consummations were any thing but empty Endeavours; and consequently the Wife must carry in her self the Proofs of the Truth, and such Proofs must be decisive for or against her; This is the State of the Question. Now to the Fact.

THE Parties were married the 1st of June, 1709. Their Marriage was follow'd by Cohabitation from the said 1st of June, to the 24th of March last past, that is to say, Three Years, or little short on't.

DURING all this Time, my Client swears to it, that the Marquis de Gesvres has not so much as once done the Part of a Husband by her; not that he wanted Will, but Power. That he wanted not Will, is manifest from his imitating all he cou'd of a Husband, the Gestures, kind Looks, Postures; every thing but Reality. So that for those Three Years, there was not only Cohabitation, but likewise Offers and Essays of Consummation, all frustrate, and without Effect.

MY Client, forc'd by the inexorable Laws of Conscience, by the Commands of her Confessor, who even refus'd her Absolution; forc'd likewise, as is notoriously known, by an almost desperate Indisposition of Body, did, at length, find her self reduc'd to the sad Necessity of bursting forth, and applying for a Dissolution of her Marriage, on account of Impotence.

THE first Step in an Affair of this Nature, is Interrogating the Husband. To this end, my Client drew up, and caus'd to be put to the said Marquis, several Heads of Examination; and in those Heads, she has describ'd the Kind and Manner of the Impotence she charges him with. She does not alledge a Privation of the Organs necessary for Generation. No; all she urges is, that those Organs are absolutely destitute of Motion. You understand, Gentlemen, what I mean; and therefore need not be inform'd, that the Impotence which I tax the Marquis with, is of the Nature of that which the Canons call *Virgidity*.

THE Heads of Examination or *Facts* being notified the 19th of April, the Marquis attended the 20th. When the Official ask'd him his Name, Age, Quality, Abode, he answer'd very regularly. When he ask'd him, Whether he was marry'd to the young Lady *Mascranny* my Client, he answer'd, Yes. When after this, they ask'd him, If at the Time of his Marriage, he was appriz'd of the End for which Matrimony was ordain'd? He reply'd readily, That he was very well appriz'd of it. But when they came to the 4th Article, where the Question is, Whether he had consummated his Marriage? He demurr'd, and required to have three Days allow'd him to reply, in order, we suppose, to cook up an Answer with his Council.

THE Council, as luck would have it, had seen in his Breviary, that the Marquis had consummated, not once, but as often as Occasion offer'd; and since Occasions of that Kind return every four and twenty Hours, he might, at that rate, have consummated seven or eight hundred times. Upon which, Gentlemen, I beg you would give me leave to make one Observation. There is no Example, that a Lady of Eighteen or Twenty Years of Age, brought up in a School of Piety, imbued with the Principles of Religion,

4 The CASE of

gion, blest with the Light of Reason, and guided by the Counsels of many very prudent Relations, was ever so wicked, and, at the same time, so senseless, or rather so mad, as wrongfully to accuse and brand with Impotence a Husband of so much Nettle, who must carry about him sufficient Proofs of his Manhood, who likewise must have left within the Person of my Client Tokens of his Achievements; and who consequently must have it in his Power to confute, and afterwards to punish severely the Calumny. Such an Attempt would be the more unadvised, in that the Husband, whom my Client has to do with, is no ordinary Person. He's the Son of a Duke and Peer, who is by Blood and Intermarriages related to all that's most powerful, either in the Army, the Church, or the Law.

So then, the Marquis de Gesvres says, That he has consummated his Marriage seven or eight hundred times; and I say, He is incapable of consummating at all: This is all the Question that is between us.

THERE must be Proofs to verify Impotence, when the Wife avers, and the Husband denies. Now these Proofs cannot possibly be found, but in the Person of the Husband, or in that of the Wife: In the Person of the Husband, when he is unnaturally form'd: In the Wife, when she continues still a Virgin.

MY Client well knew, that the Proof would not be found compleat in the Person of the Marquis. A Certificate from *Bessiere*, that was handed about, had given to understand, that he bore about him a Picture of a Man, so like one, it could do every thing but speak. So all the recourse of my Party for Proof, was in her self. And therefore, in a Petition preferr'd by her the 2d of May, she sets forth, That she is still a Virgin; and offers to confirm the same by being searched and inspected by Midwives, as usual in like Cases.

the Lady de MASCRAUNY.

THE Parties counter-plead upon this Petition; and by your Sentence of the 4th of May, you order, Sir, *That before you determine upon my Conclusions, the Marquis de Gefvres shall be visited*; which had already been ordered by two Sentences of the 27th and 30th of April: Nothing was ever more Sage. For 'tis certain, the Visitation of the Husband ought always to precede that of the Wife; because the Searchers may find, in the Person of the Husband, such Defects, as, when discover'd, may put an end to the Suit, and save the Wife the Confusion she must undergo in an Examination.

HERE, Gentlemen, it is to be observ'd, that the Sentences of the 27th and 30th of April, which directed the visiting of the Marquis de Gefvres, contains, *That they shall proceed to that Visitation, to find out whether he was disabl'd, or not; That the Searchers should draw their Report, according to the Condition of such Inability, and upon the Facts and Articles notify'd to the Marquis de Gefvres at my Client's Request: Upon which Facts and Articles the Marquis had been interrogated.* Thus the Lesson prescrib'd to the Searchers, was to examine, upon the Person of the Marquis, whether the Facts I had suggested, did agree with the Condition they should find him in; that is, you ordered them to compare those Suggestions with his Person, and to confirm, by the Original, the Fidelity of the Picture I had traced out in my Suggestions.

TO this purpose, the Interrogatories were put into the Hands of the Searchers. They read them attentively over, before they went about the Visitation; and they found therein, that the sort of Impotence which I specified, consisted in an actual Frigidity; such as took away from the said Marquis all manner of Motion. Now this is what appear'd very true, by the Event of the Visitation.

OF Four Searchers, who proceeded to this Visitation, Two were nominated by the Marquis *, and the other Two by my Client †. They made two different Reports; which it is necessary I should read to you, since Reports in these Cases are essential and fundamental Pieces. The Searchers nominated by the Marquis speak thus:

WE have view'd, and carefully examin'd the Marquis de Gefvres, and find that his exterior Parts, serving for Generation, have the requisite Figure, Size and Dimensions; but as these Conditions are not sufficient for Judging of the Consummation of Marriage, because there's Occasion for Erection and Ejaculation, which did not appear to us, we cannot absolutely decide, whether he be able to discharge the conjugal Duties, or not.

Paris, Signed,

May 24. 1712.

GAYANT and MARECHAL.

GIVE me leave, Gentlemen, to make here some Reflections upon the Reasoning of these Searchers.

THEY do really find, in the Person of the Marquis, the exterior Figure of a Man: but they decide at the same time: And what is it they decide? Why, that this Figure, tho' compleat, is not sufficient for Judging of the Consummation of Marriage. Why is it not sufficient? The Searchers give the Reason; because two other Capacities are necessary. The first might be apparent to the Eyes of the Searchers; but

* The Sieur Gayant, Physician; and the Sieur Marechal, Surgeon to the King.

† The Sieur Hequet, Physician; and the Sieur Chevalier, Surgeon.

for the second, it was not possible to give them a Proof of it that could come within the Senses. And wherefore, I pray, do they make this Remark, unless it be to prepare you for the Indecision wherein they are going to leave you?

WE see, say they, Organs; but what can we Judge of those Organs, when we find them inanimate? Nay, tho' we had observ'd in them sufficient Fire and Spirit to make them hold up their Head, would that have convinc'd us of the Capacity of the examin'd Party? No, doubtless; since even in that Case it would remain to be known, whether the Party be provided with another Faculty, which cannot be known but by its Effects, and these Effects cannot allowably be render'd sensible to us. Therefore all we can say, is, That we are in an absolute Impossibility to decide, whether the Party be capable to fulfil the Calls of this Condition, or not.

NOW, Gentlemen, methinks Searchers, who talk thus, do very plainly tell you, if you will observe it, that the sole inspecting of a slightly Husband, cannot give to Persons of their Art sufficient Grounds for Judging of his Condition, because it is impossible for them to be ascertain'd by the Senses, whether he be furnish'd with all the requisite Powers; and tho' they may be made ocular Witnesses to one of the Powers, there would remain a second, which depends on the interior, and which, according to the Rules, ought never to shew it self outwardly.

IF this be so, as doubtless it is, what other Consequence does this Discourse leave you to draw from it; but that this grand Secret not being capable of a Discovery, by examining the Husband's Person, it is necessary to look for an Elucidation of it in the Person of the Wife. I don't believe, that e'er a Syllogizer upon the Face of the Earth, can, from the Argument I have just now mentioned, draw any other Proposition than that, and if you can still doubt of it,

you need only hear what the other Searchers say, and you will be convinc'd. For by their Report you'll see, that after they have laid down as a Foundation, the same Principles with the former, they don't, like them, leave the Consequence wrapt up in its Principles: On the contrary, they unfold it, and spare you the trouble of drawing it forth. They express themselves as follows.

WE have observ'd, that all the Parts of the said Marquis de Gesvres are of a fitting Consistence, Figure, Number, and Largeness for performing the Matrimonial Duties: But because all these Conditions are not sufficient for establishing Virility, and his Power to perform his Duties without the Tokens of Erection, which we saw nothing of; we are of Opinion, that towards deciding, whether he's capable of performing the Matrimonial Duties, there shou'd appear in him some Tokens of Erection; and because those very Tokens of Erection would not be of Force enough to ascertain the Consummation of Marriage, we are of Opinion, that it would be proper to visit the Body of Madam de Mascranny, Spouse of the said Marquis de Gesvres.

Paris. The same Day
and Year as above.

Signed,

P. HEQUET, and J. CHEVALIER.

YOU see, Gentlemen, by this last Report, that the second Searchers agree with the former in all the Principles. The first common Principle is, that bare Formation of the Parts, tho' perfect, concludes nothing, when it is languid. The second, that the Reason why nothing can be concluded from it, is, that all languid Formations become suspected, because they are languid. The Third, that even tho' the Formation be attended with Erection, there cannot

even

even then be any Certainty of the Husband's Capacity, through the Impossibility of Judging of what remains, and which ought not to be shewn.

AFTER these Principles equally laid down by both Sides, equally admitted and own'd to be indubitable, I would fain know, whether all the Difference between the two Reports be any more than this; the one draws a Consequence which naturally results from those common Principles, while the other acquiesces in your Understandings, and leaves the Care of inferring upon you. The First look on you as Intelligences, capable of seeing Consequences in Principles. The Second were of Opinion, they ought to behave to you, as to Men; that is, they believ'd themselves oblig'd to set before you a complete Argumentation.

BE pleas'd to let me explain this to you by a Comparison. You take four Guides to conduct you in a dark way. These four Guides lead you to a certain open Place. Here they leave you; but, at the same time, two of them say to you, Keep following the Line which we have traced out to you; while the others say to you, Go to that Village which is before you, there you'll find what you look for. Is it not true, that if the Line traced out by the two first Guides, leads to the same Village which is pointed out by the other two, those four Guides perfectly concur, and all the Difference between them consists in the one's naming the Village you're to go to; whereas the others content themselves with shewing it to you, by describing a Line? Now in this Case, can ye fear mistaking, if you follow the uniform Indication of your four Guides? You see, Gentlemen, the Justness of my Comparison. It is self-evident; and you are not to be told, that the Village where we are to find what we look for, is the Inspection I demand.

ANY Husband, convinc'd of his own Abilities, would have exclaim'd against these Reports: would have look'd upon those Doubts of the Searchers as Defamations; would have offer'd himself voluntarily to a new Visitation; would have urged and demand'd a judiciary Examination, not only of his own Person but his Wife's. But Monsieur *de Gefures*, too wise to pretend to Bravery in the wrong Place, has managed Matters with much more Prudence. He lays hold of the first Part of the Reports, which bear advantageous Testimony of his Consummation; and after having laid down for a Principle, that to be a Husband, 'tis enough to wear the Shape of a Husband; he from thence concludes, that there is no Occasion to mind the Doubts which the Searchers had rais'd to themselves; that those Doubts are idle Scruples; and that still less heed ought to be given to those Searchers, who propos'd the visiting my Client: But that, without any more ado, he ought to be declared capable, and his Wife restor'd to him.

UPON this Foundation, he prays you, by a Petition of the 30th of May, That *forasmuch as the Searchers had found him well form'd, you wou'd please, Gentlemen, without any regard to the Supererogation of the Reports, or to the Request of my Client to be searched, to cast off and reject my Client from her Suit for a Dissolution of Marriage.*

BEHOLD therefore the State of this Cause: A Husband accus'd of Frigidity, who pretends to have consummated Marriage an infinite Number of times: Searchers who find him rightly form'd, but who plainly decide such Conformation to be inconclusive; and who, by their manner of Reasoning, suggest, or in express Terms declare, that a Visitation of the Lady is necessary: A Wife, who avers she's a Virgin, who offers her self to such Visitation, demands it, and puts the Issue of her Cause upon it: A Husband,
in

in short, who opposes it, hinders it all he can, and pretends, against the formal Decision of the Searchers, that bare Conformation (or natural Shape of the *Penis*) ought to be decisive. From hence you see, Gentlemen, will arise two Questions: The First, Whether, in general, the Conformation of a Husband is a sufficient Rule to judge of his Capacity by? And whether, in particular, it can be sufficient, after the Searchers have declar'd it to be insufficient? The Second Question is, Whether, supposing the Conformation of the Husband to be indecisive, we ought not to follow the Method which the Searchers have tacitly, or expressly mark'd out to you, and seek in the Person of the Wife, the Proof of the Frigidity which she taxes her Husband with, and which is the sole and only Foundation of her Suit.

FIRST QUESTION.

I SHALL take care not to treat the Marquis's Proposition, as a serious one: That would be doing it too great an Honour. I shall only say, that if it were valid, there wou'd be an end of the Tribe of Impotents. For there's scarce one of 'em, who is defective in point of Conformation.

CONFORMATION is only a Condition *sine qua non*, which proves indeed that every thing is not wanting; but in Cases of Impotence, the Point is not, whether every thing be wanting, but whether there is not something wanting; and hereupon there's a certain Principle in Physicks, to wit, that no Operation of Nature is perform'd without the Concurrence of Figure and Motion. Now 'tis no less certain, by Experience, that these two general Principles, Figure and Motion, do not always meet in one and the same Subject. There may be Figure without Motion, and Motion without Figure: There-

fore

fore 'tis very false arguing to say, *I have the Figure, and consequently I have the Motion.*

If the Popes had reason'd thus, we had had no Chapters entitul'd, *De Frigidis & Maleficiatis*. For 'tis certain, that those who are call'd *Frigidi*, are form'd like other Men; and this is still more indubitable, with respect to those others who are nam'd *Maleficiati*, since their Operations are only suspended by an Effect of Sorcery. Why are so many Rules prescrib'd for discovering the Impotence of such sort of Persons, since they have their Conformation entire, and since, according to the Marquis's upstart Principle, Conformation is all in all? Furthermore; To what purpose all those Canons, those Glosses, those Doctors, those huge Volumes, whose sole Business it is to chalk out a Way to the Discovery of a conceal'd Impotence? All this is perfectly useless; since, according to the foregoing Principle, there is no Impotence can be conceal'd, so long as it consists only in a bare Defect of Conformation, the Viciousness whereof is obvious at the first Glance of the Eye.

THE Person who is spoken of in the last Law of the *Cod. de repud. Qui propter naturalem imbecillitatem per biennium coire minimè valuit: Who by reason of natural Infirmary could not perform the Conjugal Duty in two Years Time*, was entire in his Conformation, since the Law does not reproach him with a Privation, but an Imbecillity or Weakness of the Organ: And yet, as conform'd as he was, he was ne'er the less Impotent for that.

THE Person, who (in the said *Novelle*, follow'd by the Chapter, *Laudabilem & de Frigidis*) is allow'd the Space of three Years for Probation, no doubt was perfectly form'd; for there had been no need of so long a Tryal, to sound the Impotence of a disfigur'd Husband: Nor would they for so long a time have expos'd the Modesty of a Wife, to the brutal Attempts

Attempts of a Monster, who had nothing of a Man, no, nor the Figure. It is therefore true to say, that Impotence and Conformation do often meet in one and the same Subject; and that therefore Conformation can't be a Proof exclusive of Impotence.

WHEN the Chapter, *Proposuiti de Prob.* requires that the Wife, who pretends her self a Virgin, shall be visited, in order to judge of her Husband's Impotence, it doubtless supposes the Husband rightly form'd; for if he were otherwise, the sole visiting his Person would have been enough to convict him: And in that Case, there had been no Occasion to apply to the Wife's Body for an Evidence, which so ill suits with Modesty. And for whose sake, I pray, was that Probation granted, that infamous Probation, and which, in our Days, has been sent back again beyond the Mountains? For whom was it invented, unless for such Impotents as were perfectly form'd? Wou'd they have put an imperfectly organized Man into the Lists with a Man? It is therefore true to say, That a Man may bear unblameable Organization, and yet be impotent: It not only may be, but frequent Examples shew it has been. Run over all the Decrees, which have been made in Causes of Impotence; and you'll find but one Instance, where Inability proceeded from a defective Formation. According to this, the Marriages of all the others ought to have been confirm'd, and Frigidity look'd upon as an imaginary Reason for Impotence. 'Tis a thousand pities, so rare a Doctrine did not sooner appear: It wou'd indeed have encouraged a great Number of monstrous and unnatural Concubinages; but there had been no more Impotents, except to God-ward; and Men would never have heard 'em spoke of.

ALL this while, I am not unsensible what you intend to urge. You fancy there's no Means left for coming at an Insufficiency, since the abolishing of the Probation I just now mentioned; but you are deceived.

ceiv'd. Custom has preserv'd one Means, and that Means is what our Searchers have pointed out to us; and I'll make it appear in a Moment. At present what I have to say is this, That if you were to ask all the experienc'd Searchers in the World, they'll tell you, None of 'em ever trusted to bare Conformation only. Nor indeed, is there any of them all but will at least demand, that the Husband shall animate that exterior Figure which appears on him: And if the Husband refuses so to do, or attempts to do it without Success, they will unanimously suspend their Judgment till they visit the Wife, if she alledges she's a Virgin.

I HAVE in my Bag a Copy of a Tryal for Insufficiency, wherein Monsieur *Jacob*, Counsellor of the Parliament of *Burgundy*, is Defendant: Never was Impotent better form'd. But because he could not shake off that Deadness which attended his Organs, Searchers pass'd no Judgment concerning his Person; nor was his Marriage dissolv'd for any other Reason, but because, upon Search, his Wife was found to be a Virgin. The Decree pass'd by *Monf. Grandin*, Official of *Paris*, in 1664.

I HAVE likewise the Trial of the *Sieur Verdin*, of very recent Date; 'twas but of last Year, 1711. This Gentleman was not only advantageously form'd, but shew'd Signs of Life, which was more than the *Marquis de Gesvres* could do: And yet, because those Signs of Life were not adjudg'd to be Signs of Health, the Searchers did not think fit to determine concerning him, from the Inspection of his Person; so the Wife was visited, and appearing to be a Virgin, she was unmarried by Decree of *M. de Pyan*, Counsellor of the Parliament of *Burgundy*, Official of *Langres*.

IN *M. Decombe's* Book, you have a Petition from the Wife of *Florent Cabu*, for a Dissolution of Marriage on account of Insufficiency. There you'll find, that the Searchers had given a favourable Report of his

his Formation, and only objected to the Drowfiness of his Parts: But because that Drowfiness for two successive Visitations prov'd impossible to be stimulated, *Cabu* was adjudged impotent. 'Tis true, he appealed from the Decree as tortious and abusive, and founded his Complaint upon the Official's not abiding by the favourable Testimony which the Searchers had given of his Conformation, as likewise, that the said Searchers had required from him such Provocations, as were scandalous and contrary to good Manners. But upon the upshot, it was determin'd against him, and the Decree declar'd not to be tortious and abusive.

YOU find likewise, in the same Book, the Tryal of one *Hubineau*, who had so perfect a Formation, that the Searchers not knowing what to judge of him, found themselves obliged to propose a Visitation on the Wife: This being granted, and she appearing to be a Virgin, it was determin'd, that there was no Marriage between them. Upon this he appealed, as the other did; but the Issue went against him in like manner.

TO conclude, Look into the Second Tome of the *Journal du Palais*, and there you'll find a Decree, which was pronounc'd upon an Appeal from a Sentence of the Official of *Rheims*: There was nothing wanting in the Husband's Formation, except perhaps that one of the two Glandules, which serve for Generation, was a little out of its Place, but that was no essential Vice; for every body knows, that as much may be done with one of those Glandules as with both. So the first Report was for him; but because when they came to make a second Report, they found he could not animate his Instrument, the Searchers gave it against him, and he was declar'd impotent. In vain it was, that he pretended he had wrong done him in the Proceedings of the Searchers, who had founded his Virility at the Expence of his Modesty.

Modesty. In vain, upon that Foundation, did he appeal as abus'd. By Decree it was adjudg'd there was no Abuse.

THERE'S no Reason to doubt, that our Searchers omitted to put the Marquis *de Gesvres* to the same Proof; and if they have taken no notice of it in their Report, 'tis because at *Paris* 'tis usual not to commit immodest Terms to writing, out of regard to Pudicity; but then 'tis only in writing they spare it, for at *Paris*, as well as in the Provinces, the Searchers never trust to a dormant Conformation.

THE Pretension therefore of the Marquis *de Gesvres* is alike contrary to the Principles of Natural Philosophy and Reason; it is contrary to Experience, contrary to the Doctrine of the Canons; it is new and unheard-of; this is the first time it ever appear'd, and I hope will be the last: For it wou'd have very strange Consequences; it wou'd be adjudging, that there is no such thing as Impotency through Frigidity, or at least that Frigidity is impossible to be prov'd, which wou'd be overthrowing all the Canons at once.

BUT what I think to be most singular in the System of the Marquis *de Gesvres*, is his going about to persuade you that simple Conformation is sufficient, whilst our Searchers assure you 'tis not. To expect that, against the express Decision of the Masters of the Art, you should take upon you to be more knowing than they, in a thing wherein it is a Virtue affix'd to your Condition to be ignorant: This methinks is pushing one's Confidence to an Excess beyond any Example. I shut up this Point, and am even afraid I have said more upon it, than the Question deserv'd.

Second QUESTION.

NOW it is requisite I shou'd make appear, that since bare Conformation decides nothing, according to the very Decision of the Searchers, there remains
but

but one Way to set this Matter clear, and that is by having my Client visited by Midwives, and they to report whether she's a Maid or no; upon which I shall have no need to expariate more than I did upon the first Question, because the Maxims are certain.

WHEN an Insufficiency can be discover'd from the Body of the Husband, there's an end of the Matter. When the Body of the Husband affords nothing but Doubts, and when the Searchers decide nothing, as in our Case, we proceed to visiting the Wife. I know 'twill be clamour'd against as an offensive Method, and that there are Physicians who hold it an uncertain one; but to talk so, is to talk against the Church, which in all Ages has receiv'd and admitt'd it. Witness the very Passages of *St. Cyprian*, *St. Austin*, and *St. Ambrose*, which are in the Mouths of every Impotent, and which the Marquis *de Gesvres* will not fail to alledge, that he may not be thought of the Number.

THE Proof of the Husband's Insufficiency by the Wife's Virginity, has not only been received by the Canons, but it may be said that it was the only Proof the Canons admitted: For they never speak of the Visitation of the Husband; doubtless, because they know the Person of the Husband cannot be decisive, but where it offends against natural Conformation, which very rarely happens. On the contrary, the Wife's Person is ever decisive; and there cannot be a stronger Argument than that which the Wife proposes, when she says to her Husband, *The End of your marrying me, was to make me pass from my maiden Condition to that of a Wife; yet, after a long Cohabitation, after many Attempts and Endeavours, you have left me in the same Condition you found me in. Are you not therefore insufficient?*

THIS is what oblig'd the Popes and Legislators of the Church, to place all the Force of the Proof in visiting the Wife. We have, upon this Occasion, the

the famous Chapter, *Proposuisti de probat. in* these Terms.

** Proposuisti quod causa matrimonii fuerit vobis de Mandato Apostolico delegata, cumq; partes essent in vestra presentia constituta, mulier proposuit, se nec a viro cognitam, nec cognosci potuisse; quod tam iuramento quam testimonio septem mulierum probavit, qua per experientiam asseverant mulierem adhuc virginem esse, viro autem per iuramentum suum, contrarium asserente, vos in negotio procedere minime voluistis, donec super hoc nostram consilium haberetis: videtur igitur nobis quod iuramento puella & testimonio illarum septem mulierum, qua ipsam per experientiam virginem asseverant, fides est potius adhibenda.*

HERE, Gentlemen, you see a Wife pretending her self a Virgin; a Husband, who for his part affirms upon Oath, *Viro per Iuramentum suum contrarium asserente*, he has consummated Marriage: This Wife, you see, makes a contrary Oath; and to support the Truth of her Affirmation, or to destroy that of her Husband, makes use of a Report of Matrons, who,

** 'Tis a Pope who speaks to a Bishop: You have signified to us, that the Holy See having refer'd a Matrimonial Cause to you, the Parties appear'd before you, and that in your Presence the Wife inform'd against the Husband, that he never had done, nor was able to do the Part of a Husband by her; which she prov'd, not only by her Oath, but by the Report of Seven Matrons, who having inspected her Body, testify she's still a Virgin, whilst the Husband deposes to the contrary. And as you thought fit to proceed no further in the Affair without consulting us, we are of Opinion, that the Wife's Oath, strengthened by the Report of Seven Matrons, who found her a Virgin after a Visitation had, ought to be of more Weight and Credit than the Husband's Oath.*

after

after visiting her, declare, She's still a Virgin. To conclude; You see the Church, upon the whole, determines, that the Wife's Oath, seconded by the Matrons Report, ought to prevail against the Husband's Oath: *Videtur igitur nobis quod juramento puella*, and so on. I ask, If this is not our very Case?

It is not in this Chapter only, but in two others, viz. Chapter *Causam*, in the same Title *de probat.* and the last Chapter *de frigid.* where the Church authorizes the Proof of the Wife's Virginity, when the Question is about Consummation. Therefore it can't be deny'd, that the Proof I demand is Canonical; nay the only Canonical Proof, as I before observ'd.

If after this, I shou'd attempt to enumerate all the Glosses, all the Doctors, and all the Decisions of the *Rota*, which suppose, as an unquestionable Principle, that the Wife's Virginity, in Cases of Insufficiency, affords a superior Proof, I shou'd never have done: It wou'd be loading this Cause with a very burthensome and useles Heap, because the Rule being manifest from the Texts I quoted, all that remains to be known, is, Whether those Texts are still in use; and of this you are too well appriz'd, to be inform'd of it by me.

You see already, 'tis the only Kind of Proof that is preserv'd and can be put in Practice, when the Husband's Person does not afford sufficient Light to the Searchers. Therefore 'tis impossible the Custom or Use of it shou'd be lost; for special Proofs are never lost; and if they were lost, they ought to be restor'd; but the Proof now in hand is very far from being lost; since the Decrees of these latter Times, and the daily Practtice of all the Bishops Courts in France, have, as it were, made it a beaten and common Road.

In the 10th Chapter of the 4th Book of Master *Anne Robert*, you find the Question treated at large. Whatever the most vehement Declaimer can possibly pro-

propose, of the strongest Nature, either with respect to the Turpitude, or with respect to the Uncertainty of that Kind of Proof, is there display'd with all the Pomp, and all the Force imaginable. And yet the Parliament of *Paris* did not suffer themselves to be dazzled by that mighty Train of rhetorical Artillery; since notwithstanding all the Endeavours of an excellent Orator, they were of Opinion there was no Abuse or Wrong done in the Sentence of the Court, which had order'd the Visitation of the Wife.

IN the Beginning of the 4th Book, *des Actions Forenses*, the Reports of *Peleus*, you have the Marriage of a Chirurgion of *Rochelle* declar'd null, upon the Foundation of Virginity's being certify'd in the Person of the Wife, by a Report of Searchers.

IN the 1st Tome of *Seze*, Cent. 2. cap. 93. you find two Parties freed from Marriage, by a Sentence of the Official of *Troyes*, and the Sentence grounded upon two Reports of Visitation; one of the Husband, and the other of the Wife: You see likewise that Sentence attack'd by an Appeal, as for Wrong done; and upon the Appeal, a Decree declaring no Wrong done.

IN the 2d Tome of the same Author, Cent. 4. cap. 86. is reported a Decree with the Pleading of the Advocate General *Lamoignon*, where that great Man, whose Wisdom and bright Parts will live for ever in our Memories, blames the Official of *Constance*, for having order'd Congress, before he had try'd to clear up the Truth by visiting the Wife. He afterwards traces out the Order, which is to be observ'd in Causes of Insufficiency; and he makes the same entirely to consist in searching the Husband first, and Wife afterwards.

THIS shews, that in the Days when Congress was allow'd of, they us'd to seek in the Wife's Person, the Proofs of the Husband's Insufficiency. And indeed, the Author of the *Journal du Palais* informs

That the *Sieur* and *Dame de Langenis* were each visited apart, before they were put to encounter each other. Now, if the visiting the Wife was practis'd before the Abolition of the Congress, ought there to be any Scruple of having recourse to it now, when the Truth is become inaccessible to us by any other Method?

IN the Affair of *M. Jacob*, Counsellor of the Parliament of *Burgundy* before-mentioned, the Insufficiency of the Husband, which seem'd doubtful to the Searchers, because of a good Formation, was not clear'd up but by inspecting the Wife; and the Case was the same with respect to the *Sieur Verdin*, whom likewise took notice of before.

IN short, if we cast our Eyes on the Book of *Decembes*, we shall find that of late you have order'd many Inspections of the same Nature with that I ask of you. All your Sentences have been executed; and in the Issue, such Wives as appear'd to be Virgins, were set free from Marriage-Bonds; as on the contrary, those who were not found to be such, have miscarried in their Demands to be so freed. It wou'd therefore argue an Ignorance in Things, to go about to pass this Practice for a Mode of the old Times: On the contrary, I may say with Confidence, that it has obtained not only in all Times, but Countries too, and that the Parliaments of *France* have authoriz'd it. *Despeisses*, Part 1. *Title of Contracts*, Sect. 4. N^o. 3. is a good Testimony to us for the Parliament of *Toulouse*. *Basset*, Tom. 1. Lib. 4. Tit. 8. cap. 4. assures us the same thing for *Dauphine*; and as for *Provence*, we need only look on *Bonifacius*, Tom. 1. Lib. 5. Tit. 6. cap. 2.

I DON'T see after this, what can be said on the general Thesis; and if from hence I descend to the Hypothesis, and cast my Eyes on the Particularities of this Affair, I not only not find any thing that makes against Verification by Virginity, but I find
nothing

nothing but what conduits to it, and shews the Necessity of it.

FIRST, The Searchers, who have visited the Marquis de Gesvres, have all formally declar'd to you, that his Person was an *Enigma*, which they could make nothing of; and that therefore there was a Necessity of looking elsewhere for an Explication of that *Enigma*. Now 'tis certain, in these Matters the Husband can't be such a Cypher, but that the Wife may find a Key to it. Those therefore, who present you this Key, and those who say the Key is not in the Husband, say one and the same thing: Consequently, to refuse the Key which the one presents to you, and which the others tacitly point out to you, is all one as if you shou'd say, we will neither open nor enter.

IN the second Place, It is not without Reason, that of the four Searchers, two have, as it were, led you by the Hand to the Proof which I offer to make, whilst the other two have told you, without any more ado, *That's the Road you're to follow*. They had all Four seen by the Interrogatories, that the Marquis de Gesvres pretended he had enjoy'd his Wife an infinite Number of Times; and that my Client on the contrary had averr'd, that those pretended Enjoyments were nothing but idle empty Endeavours: They thereby perceiv'd, that the whole of the Question was, Whether the Marquis's Endeavours were empty and fruitless thro' a Defect in Nature, or whether he fully compleated his Enterprize. Now the Difficulty thus reduc'd, wou'd be infallibly decided by inspecting the Wife; for if the Operations of the Husband had been so frequent, so full, and so entire, as the Marquis would have 'em to be, they must occasion an Alteration in the Body of his Wife. If, on the contrary, he went no farther than bare Attempts without Effect, no Alteration cou'd ensue. Thus the *Ratio* of deciding was to be in the Wife, and no where else.

AND

AND herein, Gentlemen, I may say, the Searchers
 have reason'd like Canonists. For it is very certain,
 that to give to a Wife's Virginity a Forcibleness of
 proof against a Husband's Insufficiency, it is absolute-
 ly requisite, (as says the Gloss upon Chapter *lauda-*
lem.) for the married Couple to endeavour to make
 themselves one and the same Flesh: *Debent dare ope-*
ram carnali operi; i. e. *They ought to apply themselves*
to Consummation. Now the Marquis, who says he has
 consummated so many times, has therefore apply'd
 himself to Consummation; and this appears too from
 the Facts urg'd against him by my Client. For if it
 be true, as she says, that the Exploits of the Mar-
 quis ended in bare Offers; it is likewise true, ac-
 cording to her, that the Marquis did, *dare operam car-*
nali operi, apply himself to Consummation; conse-
 quently we are in every respect in that Case, where-
 in the inspecting the Wife ought to carry the De-
 cision.

AND I have the more Reason, Gentlemen, to
 hope you will be of the same Opinion, in as much
 as you have already prejudg'd it, when before you
 came to a Resolution upon our Request tending to
 visit our Person, you order'd that the Marquis shou'd
 be first inspect'd. For you thereby shew'd plain-
 enough, that if the inspecting his Person did not
 yield a sufficient Elucidation, there wou'd be then
 occasion to visit my Client.

To conclude, Nothing ought to make you more
 forward to order this Visitation, than the Opposition
 which the Marquis makes to it: And to make you
 sensible of this Proposition, permit me, Gentlemen,
 to argue according to the two different Hypotheses
 of the Parties. First let us suppose, with the Mar-
 quis de *Gesvres*, that his Love-Exploits are without
 Number; Is it likely he wou'd hinder all these glo-
 rious Trophies to be made publick? And does it not
 look like Madness to oppose it so warmly? On the
 other

other hand, is the Madness less great on my Client's side, who knows that such a Visitation will, according to that Hypothesis, overwhelm her with Confusion, and sink her to the saddest Condition she can possibly fall into? And indeed, in reasoning according to this Supposition, methinks the Parties don't so much want Guardians as Administrators for Lunacy: For in short, each is acting the Part of his Adversary. My Client, who shou'd dread a Visitation more than Death, is the first to offer her self to it: Nay, to demand it! And the Marquis de Gesvres, who shou'd wish for nothing so much, is the first to oppose it.

THIS makes me say, that this Hypothesis must needs be false, and the only true one is, that both Parties are alike Virgins. When I argue according to this System, I find that, together with *Virginity*, both Parties recover their *Reason*, which the contrary Hypothesis deprives them of. For in this Case, mine acts a wise Part, since being sure of her *Virginity*, she runs no risk in offering a Proof of it, and since to such Proof Victory is affixed: As on the other side, the Marquis likewise acts very prudently, to oppose all he can such a Visitation, since the Event of it wou'd be equally fatal to both his Honour and his Fortune.

I BELIEVE, Gentlemen, I have said enough in Defence of my Cause. I shou'd be very glad to hear what Answer the other Side will make: For I own I can't guess it; and after I have turn'd my self on every side, I can't comprehend how 'tis possible to maintain the Cause of an impotent Husband, who has no manner of Proof whatever to clear him of Insufficiency but his Oath, whilst his Wife offers to bring Evidence of the contrary, and whilst the Searchers wish or require such Evidence: This is what oblig'd me to change my Plan. I began by treating this Affair at large; but I thought, if I made use of so many Words to defend it, all the Fruit I should reap from

from my Labour, wou'd be weakening the Certainty
of my Propositions: Therefore I conclude, &c.

M. BEGON, Counsellor.

BENARD, Attorney.

SINCE this Plea, the Marquis de Gesvres has
spent three Hearings in answering it. All his Obje-
ctions shall be reply'd to without either Delay or
Difficulty.

REPLICATION,

For Lady MARY MAGDALEN EMILIA
MASCRANNY:

Against the Marquis de GESVRES.

GENTLEMEN,

W H E N a Husband, who is accus'd of
Impotency, is necessitated to build his
Defence upon these three Propositions,
That there is no such thing as Impo-
tency thro' Frigidity; That if there
were, the Proof of Frigidity would
become impossible; That even tho' it were possible,
it ought ne'er the less to be rejected, because the
Complaints for Insufficiency took Rise from nothing
but the Corruption of the latter Ages: When, I say,
a Husband attainted of Impotency, is reduc'd to take
Shelter

Shelter under one of these three Propositions, 'tis plain what he intends by it; one may see with half an Eye, that as he sets himself up for an Advocate-General of the whole Body of Impotents, so he owns, unwittingly, that he himself is one of the Number.

BUT, if this Doctrine is likely to surprize us, the necessary Steps for establishing it, are what may much more justly challenge our Admiration. As it was impossible to plant these new Dogmas, without rooting up all the Laws for the Church; so they of the other side have made no Scruple of attempting it. Thus, if we will take the Marquis de Gesvres's Word for't, we have no longer any such Things as Canons, Decretals, Glosses, Doctors. The Canons are but Apocryphal Pieces, the Decretals mere Notions sprung from the fantastic Brains of the Popes, which the Church never regarded; the Glosses a Heap of Nonsense, the Writings of the Doctors, sick Mens Dreams. Witness, say they, what Petronius said to them, *Pace vestra liceat dixisse, vos primi jus Canonicum perdidistis*; By your leave, Doctors, you are the Men that have spoil'd the Canon-Law.

IN truth, Gentlemen, when I fancy my self in the midst of all these demolish'd Authorities, and see arising from their Ruins, a Law that favours Impotency, I can't help crying out, What a rare thing is Necessity? What Courage will it not inspire, and what Impossibilities will it not attempt? *In calam, jufferis, ibit*. But after all, as the Marquis's Enterprize bears a very near Resemblance to that of the Giants, who scald the Skies; so I believe all he will get by't, will be the Glory of falling from a great Height.

OUR whole Controversy turns upon two Points. Does the Figure of a Man make the Man? If it does not, must we look for the Proof of the Man in the Person of the Man, or must we not?

WE shall treat this in its two Branches. But first, 'tis fitting to strengthen some Truths against the rash Attacks that have been aim'd at them.

COMPLAINTS for Impotency, say they, were never heard of for the first twelve Ages of the Church. They sprung merely from that impure Source of Corruption, which the Church was overrun with in its latter Age; and if we wou'd recal the Golden Age, we must exterminate them, bury them in the same Grave with the Congress.

THO' this Proposition is unworthy of an Answer, it gives Occasion to demonstrate how ancient a Practice it has been in the Church, to sue out Divorces on account of Insufficiency; how unmoveable the Foundations thereof are, and how impossible it were to save the Honour and Conscience of Women, if their Union with the Impotent form'd indissoluble Bonds.

IT is certain, that if Matrimony be a Sacrament, 'tis only so far so as 'tis the Figure and Representation of the Union between Jesus Christ and the Church. For the Word Sacrament signifies only a Mystery or sacred Sign. As therefore Jesus Christ and the Church make but one Body, of which Christ is the Head; so the two Spouses ought to compose but one Flesh, of which it belongs to the Husband to be chief. Now 'tis certain, nothing but Consummation melts them, or rather identifies them into one and the same Flesh; therefore when one of them is incapable of consummating, there's an End of the Union, Representative of that between Jesus Christ and the Church: For such Union being thereby depriv'd of the Character of a sacred Sign, it becomes destitute of the Virtue and Indissolubility of a Sacrament. This is not my Reasoning; 'tis Pope Innocent the Third's, in the Chap. *Debitum de Biga.*

FOR this Reason the Theologists and Canonists make the Essence of Matrimony to consist in a reciprocal

procal Delivery, or, as the Doctors call it, Tradition, which the married Couple ought to make of each other's Body, if not in an actual Tradition, at least in the Possibility of such Tradition; whence it follows, that where Tradition is impossible, there is no more than the Shadow of a Sacrament, there is no real Sacrament. All which is founded upon St. Paul's Doctrine, which is well known to every Body.

NOW, if the most evident Principles of Theology authorize a Dissolution of Marriage with an Impotent, the Calls of Conscience require it as a necessary Remedy. You know the Reasons, Gentlemen: You know to what Trials the Modesty of a Woman ty'd to a sham Husband, is expos'd: You can't be ignorant what cruel Assaults she has to sustain, and how difficult it is for the lifeless Image of a Husband not to kindle in her that impure Fire, which only burns to stain. What shall I say of the Danger her Chastity runs, and the continual Alarms she's in for her Life? 'Tis notorious to what Extravagancies the Rage of a Fumbler is capable of carrying him, when he finds that Nature withdraws her self from his Efforts. 'Tis also notorious from the Example of a King of *Castile*, that these imperfect Men seek to wash away their own Shame in the Crime of another; that they purchase the Reputation of a Father at the Expence of the Honour of the Nuptial Sheets, and turn Banders of those Women, to whom they can't perform the Part of Husbands. This King of *Castile* is not the only Person, who was guilty of that infamous Piece of Policy: Many have done the like. And for these Reasons it is, that the Discipline of the Tribunals of Penance do not permit the Wife to keep silence in such Conjunctions; She is forc'd by the Refusal of the Application of the Blood of Jesus Christ, to implore the Authority of the Church to break, not the Tye, but the Appearance of the Tye, which fastens her to the Uncapable, and who is to her

her a continual Source of Scandal and Disorder: My Client can speak knowingly of this Maxim of the Confessional. How is it possible, in the midst of all these Truths, to look upon the Complaints for Impotency, as the Effects of the Corruption of Morals, and Remissness of Discipline? I think I may say, 'tis one of the most inconsiderate Propositions that was ever advanced.

I O W N, that in the six first Ages of the Church, we don't find the Prelates Ears teaz'd with such sort of Questions; but that is no Matter of Amazement. The Arbitrary Divorce, which tho' condemn'd by the Ecclesiastical Laws, was however authoriz'd by the Civil Laws, afforded always a ready Help to put a Stop to the Abuse of a scandalous Co-habitation. The Wife well knew by what Means to merit a Libel of Divorce; and the insufficient Husband, to whom a Wife was burthensome, knew as well how to get rid of her with Ease: Thus Separations were made without Noise or Bustle.

B U T *Justinian* had no sooner abolish'd the license of Arbitrary Divorces; he had no sooner shut up within very narrow Bounds the Power, which the Husband had to free himself from his Wife, but he was oblig'd to allow of Divorce to the Wife, in case the Husband was Impotent. This he did by Law 10. in *Code De Repud.* and by *Cap. 6. of Nouvelle 22.* So that at the same Instant of Time, wherein the Liberty of Divorcement was almost annihilated, the Women were likewise authorized to complain of their Husband's Insufficiency.

T H E Church, which beheld this Discipline introduced by the Civil Laws, put thereto the Seal of her Authority. We find two Canons of *Gregory I.* surnam'd the Great, and who does indeed recommend Continency to both Parties, when one of them proves incapacitated; but who, for all that, permits the Person who is not so, to sue out a Divorce, and proceed

ceed to a new Marriage. These are the Canons, *Quod autem & Requisisti*; this last is certainly St. Gregory's, since it is taken out of his Epistle to *Augustin*, the Apostle of *England*, and afterwards a Martyr. Now St. Gregory was made Pope toward the End of the 6th Century.

GREGORY II. who came to the Papacy in 714, follow'd his Predecessor's Spirit, in a Decretal which now composes the Canon, *Quod Proposuisti*. He exhorted the Husband of an ill-organiz'd Wife, to turn the Conjugal Life into a Fraternal one; but knowing that every Body has not the Gift of Continency, he concludes his Discourse with these Words, *Sed quia hoc magnorum est, si non potest se continere, nubat*: This being a Virtue of but few extraordinary Persons, if he cannot contain, let him marry.

THE same thing which he allow'd to the Husband of a disabled Wife, he likewise allow'd to the Wife of an incapable Husband; and it is from another of his Decretals, from whence were drawn the Texts, which we at this Day see upon that Subject, in the Capitularies of *Charlemagne*, and *Lewis the Debonnaire*, where a Dissolution of Marriage for Insufficiency is warranted as just and conformable to the Laws of the Church.

BEFORE the Capitularies, the 17th Canon of the Council of *Verberie*, held in 752, in Presence of King *Pepin*, had permitted the Wife to sue out a Divorce from an unable Husband: This is to be found in the 10th Vol. of Father *Labbe's* Edition; it is likewise in the *Chap. 242, and 243 de Regin.* See likewise upon this Occasion, the 64th Letter of *Fulbert*, who liv'd *Anno 1000*, with the Texts compil'd by *Tyres de Chartres*, in *Chap. 178*, of the 8th Part of his Decree.

ALL these Ancient Monuments make it evident, that the *Marquis de Gesvres*, by placing in the 17th Age the Laws of the Church, which authorize Accusations

cusations for Impotency, falls into an Anachronism of only 600 Years.

WE see that the Popes exhorted the Husbands to Continency, when the Imperfection happen'd to be on the side of the Wife; but we don't find that they exacted from the Wives that high Degree of Virtue, when the Fault lay in the Husband; nay, the Exhortations which they made to the Husbands, were not always taken for Precepts, but simply for Counsel. It is for Example said in Chap. *Consultationi de Frigid.* *Romana tamen Ecclesia consuevit judicare, ut quas tanquam uxores habere non possunt, habeant ut sorores:* In the usual Judgment of the Church of Rome, incompetent Wives ought to be cohabited with, as Sisters. But upon this Text the Gloss makes this Remark, *Ibi Papa non precipit, sed consilium est;* It is nothing but a Piece of Advice, which the Pope gives: But this Advice prov'd upon Experience so dangerous to be follow'd, that 'tis no longer tolerated by the Directors of Consciences. And indeed the Union of a Woman with an impotent Man, is neither less criminal, nor less contrary to Nature, than the Union of two Persons of one and the same Sex.

SINCE therefore suing for a Divorce, is the only Remedy that can stop the Course of so many monstrous Brutalities, and of so great a Number of Prophanations, it is necessary that the Church shou'd prescribe Rules for coming at the Discovery of conceal'd Impotency. Now the first of those Rules is, that since the Ministers of the Church can't decide such Questions of themselves, they are oblig'd to borrow the Eyes of Physicians, Chirurgions, sometimes Matrons and Widwives; in a word, of the Masters of Art, who are call'd *Experti*, (Searchers.)

THESE are not like bare Witnesses, confin'd to give an Account of only what they find by the Perception of their Senses. They are *Experti*, that is,

People of Capacity and Experience, who ought not only to give their Decision, but likewise to super-add a solid *Rationale*, grounded upon the Rules and Principles of their Art. Therefore when the Marquis *de Gefores* is for having 'em be nothing but *Judges of Fact*, and not *Judges of Reflections*, he is greatly deceiv'd, if by those almost unintelligible Terms, he means that our *Experti* were only to number and measure his Organs, without any Power to judge of their Value; this is reducing the Office of *Experti*, to the Function of simple Witnesses; 'tis taking from them the Quality of *Experti*.

THEY were in the right therefore; nay, they were oblig'd to sound the Value, as well as examine the Number, Figure, and Dimensions of the Organs, and this twofold Duty is what they have discharg'd.

As to Number, Figure, and Dimensions, they find 'em right in the Person of the Marquis *de Gefores*; but then the utmost Advantage which they grant him, is a *requisite* Configuration; nothing beyond. For as to the good and laudable Conformation, 'tis a Present he makes to himself, out of his abundant Liberality, and without the Concurrence of the Searchers. A good Conformation imports Solidity and wholesome Temperature of Substance, which Configuration does not.

THE same may be said of the perfect bodily Plight. The Marquis gives us Security for the Salvability of his Configuration; an indifferent Security, since it wants the Confirmation of the Searchers! But, says he, the Advantages I have receiv'd from Nature are visible, *Corpulence, fine Skin, fresh Colour*; and by this we must judge of what we don't see. *O formose puer nimium ne crede Colori*: O lovely Youth, presume not on thy Colour. What Tricks are practis'd in the Affair of Complexion, we all know: and as for Bulkiness of Body, that may yet more easily be counterfeited; so look out for other Vouchers.

THIS

THIS being taken for granted, all that the Marquis *de Gesvres* can pretend to, is to pass for a Man *equisitely* figured; and then it remains to be seen what Consequence he can draw from his Configuration. But before we hear him speak upon that Configuration, 'tis necessary to know what Judgment the Searchers made of it.

THEY have unanimously declar'd, that Configuration is not sufficient (say two of them) *to judge concerning the Consummation of Marriage: To establish,* (say the other) *the Virility and Power of the Marquis de Gesvres.* Here you have an unanimous Decision of four Masters of the Art; no Trust to be put in Configuration; 'tis a deceivable Sign, and concludes nothing.

FOR all this, I hear the Marquis *de Gesvres* clamouring against this Decision, and saying to the Searchers, Fools, Sots, know ye not that Configuration does all? How dare you blaspheme against Nature, and accuse her of making so fair a Structure in vain! Learn that Nature forms nothing unprofitable; and since she has given me the outward Furniture of a Man, 'tis none of your Business to raise Doubts, whether or no she has deny'd me the Efficacy and Power.

THIS then is the first Question that arises between the Searchers and us on the one side, and the Marquis *de Gesvres* on the other. For I must observe to you, that my Cause is inseparable from that of the Searchers. If I maintain that Configuration proves nothing, I do but maintain it after the Searchers; if I demand the visiting our Person, I demand no more than what the Searchers have done, as a thing necessary. On the contrary, the Marquis *de Gesvres* finds the Searchers continually in his way; from whence it comes, that after having thank'd them for granting him Configuration, he treats them as rash, superstitious, prying Coxcombs, who are for forcing Nature into her inmost Retrenchments.

IN these Circumstances, I ask not him but his Defenders, Is it possible that you, who have spent so much time in studying the Discipline of the Church, and have consumed your selves in diving into Ecclesiastick Antiquity to that Degree, as to fetch up Secrets which are known to none but your selves? Is it possible, I say, that you shou'd erect your selves Censors of four Physicians or Chirurgeons, each of them eminent for their Capacity, and among whom there are some whose Names are very famous? Indeed, when I consider this Presumption, I ask my self, Is not all this which I've heard, a Dream? Have not my Ears deceiv'd me?

BUT, independently of the Authority of the Searchers, let's examine in the first place, Whether, in general, Configuration is sufficient to purge away all Suspicion of Impotency; and in the second place, What Consequence the Marquis can draw from his Configuration in Aid of his present Averment.

HE blames the Searchers, for not paying Deference to the exterior Figure they found in him; and for me, I say that if they had paid Deference to it, they had fall'n into the most signal Extravagance human Wit is capable of, and I prove my Proposition thus.

IT is not Impotency in general of which I accused the Marquis; 'tis in particular, an Impotency of Frigidity which I imputed to him. For 'twas thus I characteriz'd his Imperfection in the Facts which I exhibited to him, in order to be interrogated. You did by your Sentence of April 30. propose these Facts to the Searchers, as the determinative Title of Impotency, which ought to be the Object of their Enquiries; and they found therein from the Beginning to the End nothing but a Frigidity compleatly specify'd throughout, that is to say, an absolute Privation of the Motive Faculty: For that's the true Character of Frigidity. Witness that Definition taught by the last Chapter de Frigid. *Frigidus is cense-*

vir qui licet habeat Membrum, habet tamen inutile ad copulam, quia inerigibile, quod melius facto potest inspicere, quam verbis exprimi. He must pass for a frigid Man, who has indeed the Parts of Generation, but unfit for Copulation, as being incapable of Erection, which is better discover'd by Inspection, than express'd in Words.

I DESIRE no more than this Definition, to shew that our Searchers cou'd not, without being out of their Wits, determine in Favour of the Configuration of the Marquis de Gesvres, accus'd of Frigidity. Indeed, a frigid Man is figur'd, *habet membrum*; but 'tis to no purpose how he's figur'd, *habet membrum, sed inutile ad Copulam*. And why does that Figure serve him to no Use? *Quia inerigibilis*; 'tis good for nothing, because 'tis as 'twere dead; it sleeps a Sleep of Iron, *omni dura quies nervos & ferreus urget somnus*; that is to say, it wants that motive Faculty, which is the Life of it.

NOW, is it not upon this Foundation that our Searchers have disallowed of the Marquis's Configuration? The first, that is, those he nominated, have they not said that the Reason why they distrusted it, was because they found it asleep? But because, say they, *Those Conditions are not sufficient to judge of the Consummation of Marriage without Motion, and so on, which we saw nothing of in the Person of the Marquis de Gesvres, &c.* This is their Principle; and as for the two others nominated by us, do they not argue in the like manner, after having said as the former, *That those Conditions are not sufficient, i. e. Configuration is insufficient, to establish the Virility and Power of the Marquis de Gesvres*; do they not add, *That to find out whether he be capable of doing the Duties of his Condition, he ought to shew Tokens of Motion*? Is not this the Fundamental Proposition, built upon the Definition of Frigidity just now quoted? which if so, can it be contradicted? Further, it appears from
this

this Definition, that Frigidity is nothing but a Configuration, naturally and habitually cold. Now, admitting this Principle, cou'd any Extravagance have been comparable to that of the Searchers, if they had reason'd thus? We know that Frigidity is a Configuration, doom'd to a perpetual Coldness: We find a Configuration upon him; therefore we cannot find a Coldness. Wou'd not this be just as if they shou'd say, We know that the Palsy is a Deadness of the Members? We find here Members; therefore 'tis impossible we shou'd find any Palsy? Upon the whole, this Principle of Configuration's being sufficient, is a Principle invented for the Cause of the Marquis de Gesvres; for this is all that's exquisite in his Defence: Nothing is borrow'd, 'tis all the pure Effect of Mother-Wit.

ACTUALLY, all who have treated of Impotence, Physicians and others, agree in this Principle, That there's no grounding a Judgment in favour of the Husband, upon a Configuration attended with a Lethargy; and that on the contrary, such Lethargy was the Characteristic Sign of Impotency: *Tertium signum impotentia*, says Zachias, Book 3. cap. 2. *est membri quamvis optime conformati flacciditas quadam, & inexcitabilis mollietas*. A third Sign of Impotence is, when tho' the natural Part be very well figured, yet it rests in a State of unalterable Slackness and Softness. If the most excellent Conformation may be bury'd in a Death-like Sleep, as Zachias intimates by these Words, *Membri quamvis optime conformati flacciditas*, what will betide of the requisite Conformation? Can it be look'd upon as a Proof exclusive of all Frigidity?

Besides Zachias, who has spoken of Impotency more like a Physician than a Lawyer, we have two Celebrated Authors, who have treated this Matter as Canonists. These two are Vincent Tagareau, and Ant. Hotman. Read the 5th and 6th Chapters of the former,

mer, and all the little Book of the latter, you'll find in every Page this Principle laid down for a Fundamental, that the goodliest Conformation in the World concludes nothing, unless it appears to be enliven'd: You'll find that in all times the Searchers trusted not in the Idol of a Man, but prick'd the Phantom, to discover whether it had feeling or not. *Hofman* tells us, pag. 227. That Men of Art have Methods to try the Sensibility of the Husband's Organization, and by an Expression of *Hofstiensis*, quoted by *Tagareau*, one may guess wherein those Methods consisted. *Dehnt*, says *Hofstiensis*, speaking of Searchers, *inspicere utrum homo moveatur ad libidinem*; Their Business is see, whether a Man's natural Part hath any Motion in it.

THE Truth of this is confirm'd by this Expression of *Præposuisti, quod melius facto potest inspicere quam verbis exprimi*; Which can better be discover'd by Inspection, than express'd in Words. For this Term *facto* visibly means the Trial, which the Searchers make when they put the Husband's Organs to the Test: 'Tis likewise confirm'd by this of *Zæbius*, *inexcitabilis mollities*; for there's no judging that it is *inexcitabilis*, unless it has been *excitata*, excited: and in short, it is confirm'd by the notorious Practice of all the Officialties in *France*. Such Gentlemen as are often delegated upon these sort of Questions, know that all the Reports of Searchers contain a Relation of the Success, whether good or bad, which their Stimulatings have met with. Of this I produce a very home Example in the Person of the *Sieur Verdin*, unmarried for Insufficiency, by a Sentence of the Official of *Langres* last Year, 1711. The Report of the Searchers in that Case, (as appears from an authentick Copy thereof,) contains a very exact and full Relation of all the fruitless Attempts which the *Sieur Verdin* made upon himself, in order to raise a Fire from some few sleeping Sparks under the Embers.

I like-

I likewise shew from the Example of Monsieur Jacob, that in 1664. the same Method was practis'd in that Officialty: A Copy of the Searchers Report in that Case, we have likewise at hand to produce. The Paris Searchers have perhaps of late Years conceiv'd it proper to forbear Indulgencies upon Paper, but they are ne'er the more reserv'd in the Act of Visitation. They bring the Husband to the Test, as of old, and accordingly pass or suspend their Judgment concerning his Person.

NOW, whether this Practice is agreeable to the Purity requir'd by our Holy Religion, is none of my Business to declare; I am here before my Masters: I shall not presume to enter into the Secrets of Theology; they are too deep for me. All I can say is, that the Practice now in Debate may be justified by this Principle of St. Thomas, which afterwards was embrac'd by other Holy Doctors; to wit, that the Actions which tend most to Impurity, are no otherwise Crimes, but in Proportion as they proceed from a lascivious Motive, *in quantum ex luxuria procedunt*; a Motive which can't be attributed to him, who only seeks to instruct the Church in a Matter of Fact, to the end the Church may be capable of deciding (if I may so say) the Doom of a great Sacrament. Be that as it will, 'tis enough for me that the Custom is Custom; 'tis the Business of the Theologists to justify it, and I am no Theologist.

BUT you'll say, you shew by six Examples, by six different Reports of Searchers, that several Husbands have been adjudg'd capable of discharging the Duties of Wedlock, on the sole Credit of their Configuration.

I MUST answer you at once, that since the Searchers pump the Virility by a Proof which they don't write down, what your six Reports prove, is not that those six Husbands were admitted Masters without shewing a Sample; all the Consequence that
can

can be drawn therefrom, is, that they stood the proofs they were put to, and came off with Honour. But I have particular Answers, which clench the Matter yet closer than the general Answer.

THE Fallacy of your Examples consists in your producing nothing but the Reports, and cunningly suppressing the Interrogatories and other Pieces, which wou'd lose you the Fruit of your glorious Discovery; 'twas prudently done, but the Care I have taken to get Copies of those Interrogatories will disappoint your Prudence.

THE first of the six Reports which you alledge, is in the Case of a very imperfect Frigidity. You know, Gentlemen, that the Operation of Man is distinguish'd into three Degrees. As the usual Terms for expressing these three Degrees are grown filthy by long using them, I shall substitute in their stead those of *Motion, Penetration, and Expulsion*. The Wife, in this particular Case, granted to the Husband the two first Degrees; and only disputed him the third. Now this being so, I ask to what Purpose should the Searchers require from that Husband Acts of the motive Faculty, when the Wife confess'd she had experienc'd them; and that all she pretend'd her Husband wanted, was a secret Faculty, which can't without a Crime be render'd sensible by its Effects?

I ADD, that in this Cause the Wife own'd that the Evidences of her Virginity no longer subsisted, whether that the Operation of the Husband had destroy'd part of 'em, or whether he had remov'd the rest by indirect Means: In short, both the Interrogatories prov'd rather an Impotency through Witchcraft, than a true Impotency. By Impotency thro' Witchcraft, I mean that which is caus'd by a certain capricious Aversion, which happens sometimes between two marry'd People, and which renders them intolerable to each other: For other sort of Witchcraft is
very

very rare. In these Circumstances the Official order'd a Co-habitation for three Years, and with some Shew of Reason: For besides that triennial Co-habitation is proper only in case of Witchcraft, there was no great Hurt done in putting again into a Husband's Hands a Wife, who no longer pretended to Virginity. When the Titles of Virginity are entire, it were putting them into the Hands of an Enemy, to commit the Wife to the Husband; but when they are effaced, there is then no need of such Caution, and all the Malice of the Husband can't take from the Wife what she has once lost.

THE Second Report is in the Case of a Widow twice marry'd, who accus'd her second Husband of Impotency, but without being able to determine what sort of Impotency it was she imputed to him: All that the Official cou'd get out of her upon interrogating was, that the Operations of the second Husband were not like those of the first. In these Circumstances the Searchers, who saw the Husband well organiz'd, (save some slight Defects) judg'd that he was only comparatively impotent, and that all his Crime consisted in not being so robust as his Predecessor. So they gave it for him, and their Opinion was follow'd by a Sentence.

THE third Example is in the Case of a Husband accus'd of Impotency, after a Month's Marriage. The Searchers found in him an excellent Conformation both of the whole Body (in general,) and (in particular) of the *internal Parts destin'd for the Consummation of Matrimony*. How cou'd they judge of the good Disposition of the internal Parts, if the Excellence of the Interior did not exhibit it outwardly by sensible Marks? And what cou'd those Marks be, but such as did not appear in the Marquis de Gesvres, when he was visited.

THE fourth Example is in the Case of a Husband who wanted no Motion, but whose Vice consisted in

a too

too prompt Precipitancy, which caus'd the Sperm fly off before its time. The Searchers come and visit him, and finding him well condition'd in all respects, are of Opinion that that Vice, if it were true, does not form a radical and incurable Impotency. They say, That such an Imperfection is not beyond the Skill of Physick to amend; upon this Foundation they declare him a Husband, and thereupon follow'd Sentence. Is there any Similitude between that Case and ours?

THE fifth Example is in the Case of a collusory Accusation, preceded by seven Years Marriage. The Wife alleg'd in general, that the Husband was impotent, without specifying the Sort of Impotency: And the Husband, to all the Interrogatories, continually answer'd, *That is true, that is true.* Yet when the Searchers examin'd him, they found him of so steeplechick a Constitution, and so excellent a Conformation, that they declar'd in the most affirmative Terms, that the Suspicion of Impotency could not fall on him, if they were to build solely upon Conformation. But the Marquis de Gesfres can reap no Advantage from hence, because here is Conformation and Constitution; and we may say, that if his did not incline the Searchers in his Favour, 'tis because his was not found as the Man's in this Case, superior to all Suspicion.

THE sixth and last Example is in a Case still more singular than all the rest. A Husband becomes a Father, loses his Wife, and proceeds to a second Marriage. After several Months Cohabitation with his second Wife, he goes a Voyage to Sea. During his Absence, this second Wife marries another Man; and the first Husband, at his Return home, is saluted with an Accusation of Impotency, which he answers by saying, I have had a Child of my first Marriage, but the Wife insists upon it, that the Birth of that Child was only owing to his Wife's having to
do

do with another Man. Behold the State of this Contest, in which 'tis visible that the Searchers cou'd not reasonably doubt of the Faculties of one who had been a Father.

WHO wou'd not, after this, wonder at the Marquis's Confidence, in pausing these six Reports for so many Proofs of his false Principle, that Configuration alone is a Title for a Husband? But to baffle every manner of way his Paradox, I am willing to suppose for a moment, as he does, both that Configuration is a Proof of Virility, and even that it is not allowable to make a Noise about it, to discover what sort of Sleep it sleeps. I say, that in adopting these Principles, there's no deferring to the Figure but when all other Proof is wanting, as it was in the Case of these six Reports; For in none of them did the Wife pretend her self a Virgin; in none of them did she offer her self to be search'd; and in most of 'em the Husband own'd he had not consummated; which render'd the visiting the Wife indifferent, and of no Use.

BUT because in these Circumstances, thro' Necessity and for want of other Proofs, they were oblig'd to recur to the Configuration of the Husband; does it follow we must do so in a Cause like ours, where the Wife alleges she can afford in her own Person sufficient Evidence to convict her Husband of Frigidity? If do indeed own, that in a great Dearth of Evidence we must be content with what the Occasion furnishes: But that in a Case where the Disposition of the Business affords several Proofs, we should reject that which is most certain to stick to what's most dubious, this is what I can't comprehend. It can't be deny'd, that the Proof resulting from the Husband's Configuration, is the most deceitful of all Proofs; nor, on the other hand, can it be deny'd, that if the Wife can prove her Virginity, such Proof shou'd prevail beyond the Husband's Configuration.

therefore we were reduc'd to Configuration in Cases where Configuration alone may be consulted, it you'd not follow that we shou'd be confin'd to that one, when the Wife's Virginity can furnish clearer Rights: And by this single Consideration wou'd fall to the ground the Consequence, which the Marquis de Gesures draws from his six Reports.

THIS Reflection leads me to make another, by which I enter into an Examination, not what Advantage the Configuration in general may give to a Husband accus'd of Impotency; but what Arguments the Marquis de Gesures may in particular draw from his, to apply them to his Cause.

To judge of this, it must be consider'd, that between him and me, the Question at present is not whether he is capable; but whether he shall hinder me from proving him incapable: This is the Git of the Question. We carry about us a Prooof of his Insufficiency; we offer to produce it, and he hinders

Now, methinks, if a Man offers a Proof, he shou'd have on his side, either a physical Demonstration, or one of those Presumptions which the Law calls *juris & de jure*, of such Efficacy as not to allow of an opposite Proof. Such for Example is the Presumption, *filius is est quem nuptia demonstrant*; the Marriage-bed leads you to find out the Son.

Now let the Marquis de Gesures tell us, whether his Configuration is a Physical Demonstration of his Ability: I am sure he will not push his Confidence so far. And if he's forc'd to make of it a Presumption, *juris & de jure*; I shall ask him where he finds it written, *Vir is est quem figura demonstrat*, the Shape leads you to find out the Man.

THIS shews that the only Consequence he can lay hold of from his Configuration, is a loose and general Presumption, founded upon the Argument, *ex communiter accidentibus*. So that his Reasoning stands

stands thus: Commonly Men that have the Figure are perfect: I have the Figure; therefore I ought to be presum'd to be a perfect Man. But as this Presumption is founded upon nothing but upon a common Accident; so neither is it of any force, but so far forth as it is not combated by a contrary Proof, and such as is particular to the Subject.

It is presum'd, for Example, that all Men have the free Exercise of their Reason, because Men are commonly rational; therefore each Man will be presum'd rational. But if to invalidate a last Will, I offer to prove that the Testator was not of sound Mind, the Offer of such Proof instantly sets aside the general Presumption, which made the Testator be look'd upon as a Man who had the free Exercise of his Reason.

SINCE therefore Configuration can furnish nothing but a loose and general Presumption, like that which presumes Reason in every Man, till the contrary be proved; I say that the Marquis's Configuration, be it what it will, can't deprive me of the Liberty of proving that he's impotent: I say, that so soon as I offer such Proof, his Configuration vanishes, and can no more assist his Cause, than it did his Consummation of Marriage. The Reason is, because the Question consists in this, Whether he shall hinder me from proving the Impotency: And he is so far from having a Right to interdict this Proof, that the Minute I offer it, he ceases to have either Configuration or Presumption on his side.

I KNOW very well he will tell me, that the Proof I offer is infamous, injurious to the Husband, injurious to the Sacrament, useless, uncertain, &c. but that is not the Point now in hand. When that time comes, I shall make appear that such kind of Proof is equally favourable to Modesty, favourable to the Dignity of a Sacrament, favourable to the Elucidation of the Truth; and till these Propositions

re demonstrated, I may before-hand argue conditionally, as if they were already so. Now in this Supposition, how can the Marquis de Gesvres with his Presumption, which is nothing but a very loose and vague Topick, stifle my particular Proof.

I GO farther and say, that even his Presumption is no longer a Presumption, after Reports of our Searchers. Before these Reports, his Configuration might be look'd upon as Appearances of Virility; but scarce were those Appearances condemn'd and rejected by the Searchers, upon the particular Examination they made of his Person, but they cease to have the Force or Privilege of Appearances. They might formerly pass for a Vizor; but now the Vizor's taken off, they are nothing: And yet with this nothing, the Marquis de Gesvres thinks he can fight against a Proof.

WHAT's yet more amazing is, that he who distinguishes three Classes of Impotents, the convicted, the presum'd, the suspected, and who assumes the Glory of inventing this last to place himself among 'em, allows consequently that he is at least a suspected Impotent; and yet he will not suffer that this Suspicion should be clear'd up; as if in a Question wherein a Sacrament is concern'd, it were lawful to leave the least Doubt remaining.

BUT why do I mention Doubts: Does not the Marquis de Gesvres, by his Actings, betray the Secret he so much endeavours to conceal? And for Proof of this, I here ask all Husbands; I ask all those in whom Nature has not bely'd her self, and play'd 'em false; that is, the whole World, except the Impotents. I tell each of those Husbands, each of those perfect Men, here are two Reports of Searchers, who agree in giving you Configuration, but a very suspected one; and so suspected, that they make us doubt whether you are Men, and whether you ought not to be separated from your Wives. These
Searchers,

Searchers, at the same time, set down the Cause of their Suspicion; they ground it upon the Extinction of all Motion, which they observ'd in you. What Course mean you to take? This is the Question I ask them. Now let any Man put himself in their place, and answer; let him consult with himself, and then let's see if he will not cry out, How! have these Searchers an Intention to endanger my Honour, my Condition, and my Fortune? (These are the Marquis de Gesures own Words.) Will they, I say, bring all these into Danger, because they suspect I am depriv'd of a Faculty which I am but too well provided with, which I shou'd be glad sometimes to be less sensible of, and whose Returns are very often a Grievance to me? Jesu! if they doubt whether I have Ability, I wou'd very soon undeceive 'em. Let 'em come to my House one or two Mornings, I shall not have much trouble to convince them what I am.

I BELIEVE, Gentlemen, that all those Husbands, all those perfect Men, will not disavow the Answer I put in their Mouths. I believe you too will agree, that this is the Language they are like to speak. How comes it then, that the Marquis de Gesures talks in so very different a manner? How comes it, that instead of justifying his Configuration by sensible and ocular Proofs of his interior Valour, he gives wretched Reasonings for his whole Defence? Certainly a Man need not be very cunning to see that what obliges him to take this Course, is, that wretched Reasonings cost nothing, whilst the rest is beyond the Power of an Impotent. Here it is then that Impotency unmasks it self: By this Character I know it; by these Proceedings she makes her self visible.

BUT does it not betray it self yet more, when it refuses to the Searchers the Light which they demand and hope to find in the Person of my Client? Let us here resume the Image we just now left: Let us a second time interrogate those Husbands, those perfect

perfect Men: Let us ask them, if in the Marquis de Gesvres's Circumstances they would stand upon Niceties, and believe like him, that an Inspection by Masons would be such a Prophanation of a Wife, as to make her unworthy of their Embraces? Methinks I hear 'em cry aloud: Let her be deliver'd over to the Searchers, a God's Name; let the whole Faculty both of Physick and Surgery exhaust their Speculations upon her, I don't fear her being found in any other Condition, than what a Wife should be in after three Years conjugal Cohabitation. Thus, in my Opinion, would they speak. Since therefore the Marquis de Gesvres does not speak like others, I hold it for certain he is not made like others; I hold it for certain, that he's fall'n into a Palsy: And why should not I believe him to be Paralytick, after what I have read in *Tit. 9. Book 9. of Zachias*? That Author, discoursing upon the Causes of Impotency, tells us, That a Man's Genitals sometimes fall into a Palsy; that then there's an end of Hope; all's lost; no Resource left. And this not only when this Evil seizes People who are upon the Decline in point of Years, but likewise when it attacks young Folks; Then, says *Zachias*, Nature loses the Habitude of conveying the Spirits towards the afflicted Parts; and from thence it happens, that those Spirits so entirely quit their Channel, that they never resume it again. The Author's Words are these: *Pro omnibus autem commemoratis impedimentis, considerabilis est genitalium paralytis, nam hec etiam si vir in atate non multum profecerit (the Marquis de Gesvres is but twenty Years old,) remedium omne respere consuevit. Unde in omni atate res condemnata est, desuescente etiam natura, suo influxu ad illas partes spiritus transmittere.* And this is doubtless the Reason why that grave Author the Great *Petrone*, who has spoken so ill of the Canonists, puts these Words into the Mouth of a Lady dissatisfied with her Favourite, *Paralysin cave; away, Wretch! you're going into a Palsy.*

AND

AND indeed, the Marquis's Ail-must needs be a Palsy; for how else is it possible, that in the Bloom of his Age he should be in that Condition, which perfect Decrepitness hardly brings with it. By his own Confession, the Fires of the first Night were stifled by an Ecl-pye. Who ever heard that an Ecl-pye was a Charm to stop the Effervescence of Nature, at a time when its Sallies ought to be the most violent? By his own Confession likewise, he barricaded himself the second Night in his own Apartment, to enjoy the Pleasure of his beloved Solitude. Does not such an Eclipse discover plainly to us, the Horror which Fumblers have for the Approaches of the fair Sex? A Horror which unfolds it self, just when the fatal Moment arrives; and then they are obliged to abandon themselves to the Impressions of Nature, which at first is stronger than Policy, as, in its turn, Policy becomes stronger than Nature. And this is what happened to the Marquis *de Gefures*. He gave this second Night to Nature, and the rest to Policy. Let us add another Fact: The Marquis, at his Return from his first Campaign, is left in a Bed-Chamber, *solus cum sola*, without a Soul besides himself and my Client; and when he's ask'd, Why he did not make use of the Opportunity, he answers, *The Place was not proper*. I appeal to all Men of Sense, whether this be nt the Language of Impotency. In fine, who ever heard of a Husband asking three Days Time to study the great and difficult Question, Whether he has consummated his Marriage? I know the Marquis pretends he had not read the Facts, and was not appriz'd of the Interrogatories they were going to examine him upon. But can a Man, who answers so well to the three first Articles, and who has the Cunning to stick just upon the very Point that pinches, can such a Man say he had not read the Facts? If he had not read 'em, how comes he to hit so exactly? 'Twas indeed so very lucky, that 'tis impossible not to suspect some Art in it.

ALL

ALL that I have said being manifest from the Interrogatory, we cannot compare it with the Searchers Report, and at the same time with the politic Management of the Marquis, without seeing very clearly that there never was any other Eel-pie in the Case, but a perfect Palsy.

If after this, other Proofs are required, they may be found both in the Nature of the Facts notify'd to the Marquis, and in the Nature of the Marquis's Answers thereunto.

I HAVE been reproach'd for using Art (as they say) in drawing up my Facts; but what is it they call Art, if it ben't a Resemblance of Nature? Thus, according to Monsieur *de Gesvres*, the Picture I have drawn of his Frigidity, is artful for no other Reason but because 'tis natural; and I tell him it is natural for no other Reason, but because it is true; and true for no other Reason, but because it was taken from an excellent Original. You, Gentlemen, will judge of it, when you come to read the Interrogatories; for-I make no doubt but you'll go through all the Evidence, before you determine upon so important an Affair. You'll find in my Facts so genuine a Portrait of Impotency, that one must ha' been a Devil to have trac'd it from one's Fancy only.

COMPARE afterwards with these same Facts the Answers of the Marquis *de Gesvres*, you'll find therein the Fruit of his three Days Study. You'll observe therein a meditated Dryneis; the Language of a Parrot, *I have consummated, I have consummated*, and that's all. The more I advance into the Detail of Circumstances, the more the Marquis avoids it. That is wise in him, who has not Truth on his side.

BEHOLD now this mighty Argument drawn from Configuration, destroy'd and baff'd every manner of way, destroy'd in the general *Tnesis*, destroy'd in the particular Hypothesis of the present Case. It now remains to see, whether the Marquis has been

more happy in proving that the Visitation demanded for my Client, is an infamous Proof, injurious to a Sacrament, fruitless, uncertain, &c.

IN this second Part, I have the same Advantage as in the first; that is, my Cause is interwoven with that of the Searchers; and the Marquis de Gesvres looks upon those Searchers, and my self, as his common Adversaries.

YOU have observ'd, Gentlemen, in the first Pleading, and if you have forgot it, you may refresh your Memory out of the printed Paper, which was presented to you: You have observ'd, I say, that the uniform Reasoning of the four Searchers leads you directly to the Sentence I wish. By one and the same fundamental Principle, which is the Impossibility of making a sure Judgment of the Husband's Person, even from his Person; and by an infallible Deduction, by one and the same Consequence, which is the Necessity of seeking in the Wife's Person, the unriddling the Doubts which remain upon examining the Husband; Two of our Searchers have expressly drawn this Consequence; the other two have left it to be drawn. This is all the Difference that is observ'd between 'em: And this is only so in the Terms; for at the bottom, 'tis impossible that the same Principles shou'd produce contrary Consequences. Therefore when the second Searchers unfolded the Consequence, they were but the Interpreters of the former, who thought fit to leave it involv'd.

THEREBY I vindicate these same Searchers from the Calumny that is thrown upon them, when they are charg'd with exacting from the Marquis de Gesvres, a Proof that deserv'd Thunder from Heaven; a Proof that is no other than the Sin of Onan. No, Gentlemen, our Searchers are not guilty of such Wickedness. They did not say to the Marquis de Gesvres, Let us see whether Nature, who has refus'd you Motion, has deny'd you also the rest. They were

were far from talking to him in that manner, so soon as they found him inanimate: For that second Faculty, the very Name whereof is shocking, wou'd have been useless to him without the first. But wherefore did they speak of it; they spoke of it by way of Information, *per modum docendi*. They spoke of it to give you to understand, that even tho' the Marquis were not depriv'd of the Motive Faculty, that wou'd be only a Presumption in his behalf, and no Certainty of Virility. In short, they spoke of it to let you know, that if you sought for Certainty, you must apply elsewhere: And so they did it, to lead you to their Purpose, which was to cause you to order that Visitation which the Marquis de Gesvres abhors, as the Rock on which his Cause will most certainly split.

SINCE therefore the Sentiments of the four Searchers unite, in making the Marquis's Capacity depend upon the State wherein he has put, or left, my Client; I don't think, Gentlemen, that you can possibly err in following their Opinion. I shou'd rather think 'twou'd be risking too much not to follow it: And if you will give me leave to speak what I think, I shou'd reason in this manner, were I to sit a Judge in the Cause. This is no Question of Law; 'tis a Question of Fact, and of a Fact absolutely impene- trable to my Eyes: I must therefore be governed by those of the Searchers. If those Searchers had reason'd ill; if they had run into any Contradiction; if they had laid down Principles apparently false; or if after establishing good Principles, they had from thence drawn Consequences which were not contain'd in the Principles themselves, my Duty had been to order a new Visitation: But here I find nothing but what is exact and just, in the Arguments of the Searchers. Their Principles are incontestable, the Consequences which they deduce, or which they have to be deduc'd, are visibly chain'd to those Prin-

ciples. Why then should I dissent from them? If I join with 'em, I am out of Scruple; in case I err, the Error will not be mine, 'twill be another's. Error never is in him who does but follow; 'tis always in him that leads. What then have I to fear in following? And what have I not to fear in not following? If I will be my own Conductor, I walk without Guides and without Eyes, between two frightful Precipices. I shall perhaps separate those whom God has united or leave united those whose Conjunction he abhors. No, I will not make my self answerable for the Fruits of so fatal a Mistake. So I abide by the Searchers. This, Gentlemen, is the Principle I should embrace: Pardon me, that I take the Liberty to represent my Thoughts.

SINCE therefore our Searchers have directed to the interlocutory Order which I propose, where can be the Difficulty? But this Order, say they, is against Modesty, as well as the Dignity of a Sacrament, and there's no deriving any thing from it, but Consequences alike fruitless and uncertain. This is what I must now reply to.

As to what regards Modesty, I say first, It has perpetually served for a Veil to Impotency: The Tribe of Fumblers have us'd this Veil so long, that 'tis worn threadbare; a Man may see thro' it. I add a second Consideration, which is, that the Modesty of a Fumbler's Wife is a Captive Princess groaning under a severe Tyranny, and who is happy if she can redeem her self for a Ransom. And in the third Place, I shall borrow *Sanchez's* Argument. If we so easily give up Modesty to the Necessities of Health, why should People scruple to sacrifice it to the Dignity of a great Sacrament, always prophand by an Impotent? For the fourth and last Reason I say That if the Dispute between us were about Morals. If we were enquiring what was most suitable to Decency, Civility, Modesty; all those Common-Places

of Morality, which the Marquis spreads and lays before you, might be in season; but our Object is not to find out what is lawful, or not lawful to be done; it is to find out what leads most directly to the Discovery of Truth. When we are to make a Sermon, a Disputation after *Seneca's* manner, a Declamation like those of *Quintilian*, then a God's Name preach up Modesty as much as you please; but at the Bar, where Bashfulness always gives place to Truth, all that mighty Ostentation of gilded Sentences will serve only to stun the Populace, but never benefit the Cause. The Question is about a Fact, which requires a View of the Premises. Now to go about with Morality to hinder such View, is precisely as much as to say, the Condition of the Place makes against me.

ALL this Trash being cut off, it only remains to see, whether the Proof I require be canonical, and whether it be admitted by Custom.

NOW that it is Canonical, I have prov'd by the Chap. *Proposuiti*, as well as by Chap. *Causam de Prob.* and so well prov'd it, that my Proof has receiv'd no Answer. For is it an Answer to say, that *Gregory VIII.* Author of the Decretal *Proposuiti*, held the See but two Months; as if the Assistance of the Holy Ghost was promis'd to none but long *Pontificates*? Is it likewise an Answer to deny the Decretals to be the Laws of the Church? You say you never heard of this Proposition; I believe it: but 'tis ne'er the less common, nor incontestable for that; and because I make nothing as you do, *by dint of my own Wit*, I establish what I advance, with the Authority of *Monseigneur de Mareca*, who speaks thus in Chap. 10. of his first Book. Our Kings, says he, of the second Race, were no ways inferior to those of the first, in the regards they paid to the Decrees of the Holy See. There needs no further Proof of this, than the Volume of Decretals; for those Decretals, except some few, which Custom has rejected for Reasons we shall

take notice of elsewhere; those Decretals, I say, have been always look'd upon in *France* as the Laws of the Church, and that not only in the Bishops Courts, but likewise in the Tribunals of the Royal Judges.

WHEN, after this, I see certain New-Corners, puff'd up with some early Successes they have met with at the Bar, abrogating by their Authority the whole Body of the Decretals, I own I can't contain my self. Do not those Gentlemen know, that for above 400 Years, the Common Law of *France*, the Law practis'd in all the Episcopal Courts, which then took Cognizance of most Affairs, was no other than that of the Decretals? If this be so, as no body can doubt it, the Decretals then are confirm'd among us, by a Usage of four Ages: And if since *Charles VII.* we have rejected some of them, as clashing too much with the fundamental Maxims of the State, will that hinder the others from preserving their Vigour?

I OWN therefore with *Monsieur de Marea*, that the Decretals which make a Breach upon the Sovereignty of our Kings, the Liberties of the *Gallican* Church, and the Hierarchical Power, have not amongst us the Force of a Law. I own too, that it were criminal to follow them; but the Decretal *Pro uisti*, is not of this Number; it neither hurts the Royal Authority, nor our Liberties, nor the Subordination of the Hierarchy. 'Tis a Law which determines concerning the most spiritual Matter that ever was, concerning a Sacrament, or at least concerning the Means of knowing whether there was, or was not a Sacrament.

NOW, what says this Law? Why, it decides in Substance, that in Questions of Impotency, where the Husband affirms he has accomplish'd his Marriage, while the Wife affirms the contrary; the Wife's Affirmation ought to carry it, if by visiting her Person,

son, and the Report of Matrons, she can make appear she is a Virgin.

I KNOW very well, that as the Debate in hand is about a Proof which is to enter into a Judiciary Preparation, the Decretal which I cite, wou'd have no great Force, if the Course of Judgments had not adopted the Proof, which that Decretal authorizes; I mean the Proof of the Husband's Impotency by the Wife's Virginity. But need I again prove to you, that this sort of Evidence is in Use to this Day, nay, in common ordinary Use? Certainly it wou'd look odd in me, to go about to demonstrate to you, what you see daily, Gentlemen, what every body sees, what all the Practitioners of the Ecclesiastical Court know full well.

YET since I am forc'd to take a Flambeau to shew the Sun, I shall not go farther back than the Time of Master *Anne Robert*, who in the 4th Chap. of the 10th Book, has recorded a Cause of Impotency, in which all the Question was, whether the Proof of the Husband's Frigidity shou'd be look'd for in the Body of the Wife: This Author's Work is in the Hands of all the World. There may be seen the Reasons he brings for and against the Husband, who oppos'd the Visitation. In the Issue, it was resolv'd, that a Visitation might be order'd without Wrong: Whence I conclude, not only that the Usage of such Visitations is preserv'd, but that it was also solemnly approv'd by a Decree; for surely 'tis approving it, to declare, it had nothing of wrong in it.

TO this Example must be join'd those I quoted in the first Plea, and which remain unanswer'd; for instead of answering thereto, they hang upon the Decree of *Caute*, which I did not cite.

I MUST likewise super-add the two Works of *Tagareau*, and *Hotman*. You'll find that in their Time, the Visitation of the Wife was order'd jointly with that of the Husband, and that the one was no

less frequent than the other. I likewise shew the same by the Example of Mr. Jacob and others, quoted in my first Plea.

BUT because they of the other side have been so very extravagant, as to pretend that the Inspection of the Wife was a Sequel of the Congress, which was at that time practis'd, and from thence to conclude, that the Abolition of the Congress did likewise put an end to that sort of Proof; I find my self oblig'd to shew in this Place, both that there's no Relation between the Congress and the Inspection I require, and that after the Abolition of the Congress, this Kind of Visitation continued in use as before.

As for the first, 'tis making a Jest of the Publick, to go about to shew any Conformity between the Inspection of the Wife, and the Congress. Need I here explain the essential Difference between these two Things? Is not every body sensible of them? And would People have me minutely scan such Operations, which they fear even to conceive in the Lump?

I CONTENT my self therefore to say, that the Inspection I demand has been a Proof in all times; 'tis not to the Decretal *Propositi*, 'tis to the Usage antecedent to that Decretal, it owes its Introduction. For the Decretal only confirm'd and authoriz'd a Usage, which it found and establish'd: 'Tis not so with the Congress; which introduc'd it self without the other, and almost within the Memory of our Fathers. Now the Case being so, I say, these two Kinds of Proof have no Alliance together: The * Congress is abolish'd; so let it be, with all my Heart.

* The Congress means the Act of Copulation, in the Presence of an Ecclesiastical Judge, appointed to see it performed.

We are now in the same Condition we were in before that Monster appear'd: But as before that Time, the Proof of Virginity was a Proof admitted by Custom; and authoriz'd by a Law, there's nothing to hinder you from making use of it now. For in short, the Decree which banish'd the Congress, did not banish the Proofs which were in force before the Congress.

ACCORDINGLY the Proof we speak of has been allow'd in an infinite Number of Occasions, even since the Congress was repeal'd. All your Registers, all the Registers of the Episcopal Courts of France, are full of Examples, which authorize my Proposition; but to avoid Prolixity, I shall only produce two of this Court, the Master whereof has furnish'd me with the Pieces I shall cite.

THE first of these Examples, allerdg'd by the Marquis de Gesvres himself, is that of *Cajola*.

CAJOLA being complain'd of for Insufficiency, pretends he has consummated, whilst his Wife maintains the contrary. Upon this, M. Cheron the Official, of his own proper Motion, orders a Visitation of the Husband, and, *if need were, of the Wife*. These Words, *if need were*, left it to the Judgment of the Searchers, whether 'twas necessary to proceed to visiting the Wife.

THE Husband being inspected, is found well conform'd, except as to some very inconsiderable Defects, so the Searchers not meeting with perfect Satisfaction in his Person, have recourse to the Body of his Wife; but it thereupon appearing, *that she had frequently used the Rights of Marriage*, (these are the Words of the Searchers) her Complaint was rejected, and the Marriage confirm'd.

THIS is an Example, which, methinks, ought to encourage the Marquis de Gesvres, not only to suffer, but even to require the visiting my Client. For if he has made her enjoy *the Rights of Marriage*, so frequently as he pretends, 'twill be no more difficult to

find Footsteps thereof in her, than 'twas to find them in the Wife of *Cajola*.

THE second Example is that of *Hubineau*, which has so perfect an Affinity with the present Case, that I can't dispense with my self from giving it somewhat at large.

HUBINEAU being interrogated upon his Impotency, declares he has consummated, at least he believes so; and if he has not consummated, the Fault lies in the Refractoriness of his Wife. The Wife being interrogated, insists upon't, that she's a Virgin, and consents to have her Body inspected.

WHEN *Hubineau* was visited, observe what Report the Searchers made. The Terms of it are indeed more reserv'd than those of ours; but it deserves to be here transcrib'd.

After having examin'd the said *Sieur Hubineau* in all the necessary Parts; for knowing whether he be apt and capable to fulfil the Devoirs of Matrimony, we cannot give a Decision sufficiently full and valid, without having first visited and examin'd *Mademoiselle de la Mothe* his Spouse, from whom we may get the necessary Lights for drawing up a sure and juridical Report, and so far decisive as is requisite in an Affair of such Importance. This shews by the bye, that *Hubineau* had his Confirmation entire; for otherwise the Searchers would have condemn'd him upon inspecting his Person, and they would not have concluded upon visiting his Wife.

BUT letting that pass, the Cause in this Condition is brought before you, and *Hubineau's* Wife forms a judiciary Demand to be visited upon the contradictory Pleading. A Sentence passes, May 19. 1700. in these Terms, Upon the Plaintiff's Request, we order that she be visited in her natural Parts by the Searchers: This is the whole of that Judgment. For we must not rely upon the Representation, which the *Sieur de Combes* has made of it in his Book; he modell'd it

by his Fancy according to the Instruction good or bad, he was minded to give his Reader: But I have an Exemplification of that Sentence, sign'd by him in Quality of Register; and this Exemplification, which is conceiv'd in the Form above-recited, ought to have more Weight, than a Copy he gives to the Publick as an Author.

THE forefaid Sentence was executed: *Hubineau's* Wife was inspected by six Searchers, two Physicians, two Surgeons, and two Matrons. These six Searchers agree she's a Virgin, and that the Marriage was never consummated; but four of the six attribute this want of Consummation to the Impotency of the Husband, while the other two impos'd on by *Hubineau's* good Conformation, judge that he wou'd not be incapable of consummating, if he were again to live with his Wife.

THE Promoter upon this concluded, that these latter ought to express themselves more clearly; but without having any regard to their Conclusions, You, Sir, pass'd a definitive Sentence, declaring, There had been no Marriage between the Parties.

FROM this Sentence, an Appeal, as for Wrong done, is brought by *Hubineau*, and a Day appointed for Hearing: During the Preparation, *Hubineau* demands to be visited by two new Searchers; which shews that his Plea of Wrong done, consisted in that he had been judg'd Impotent upon the visiting his Wife. It was however decreed, there was no Wrong; and so the Proof which results from Virginity ayerr'd by a Visit, was adjudg'd a Canonical, Lawful, and Non-abusive Proof. Now I wou'd fain have *M. Chevalier*, by the Dint of his Wit, shew me any Difference between this Case and ours. Was not the Visitation of *Hubineau's* Wife propos'd by the Searchers, as it is in our Case? Was it not requir'd by the Wife, as ours is? Was it not upon the Wife's Request, and in spite of the Husband's Opposition, order'd, as it doubt-

doubtless will be in this Cause? In short, upon the sole Assurance which the Searchers gave of the Wife's Virginity, was she not freed from her Marriage, as 'tis certain my Client ought to be? And why were the Searchers (who visited *Hubineau*) oblig'd to conclude upon visiting the Wife, if it were not because *Hubineau's* Conformation, as good as 'twas, as appears from the Report of two of the Searchers, who bandy'd together a-part, was judg'd an ill Warrant of a Husband's Manhood? A Judgment perfectly like that which our Searchers have given of the *Marquis de Gesvres's* Configuration.

ANOTHER Precedent which I have taken out of the Officialty of *Rennes*, and which, like the other, is posterior to the Abolition of the Congress, will compleat the Indubitableness of my Proposition.

Margaret Landry, in forming her Complaint against her Husband for Insufficiency, prays, at the End of her Libel, that she may be permitted to make Proof of her Virginity by a Visitation and Report of Searchers.

THE Husband being visited, is found perfectly figur'd; but because he had little or no Beard, and the Searchers observ'd some Signs of Weakness in his Brain, they declar'd in like manner, as those we have been speaking of, that they cou'd form no decisive Judgment of him, without examining the Wife's Body.

THE Contest, reduc'd to these Terms, is carry'd into the Episcopal Court of *Rennes*, where there's a Rule made. I ask the *Marquis de Gesvres*, Whether the Question differ'd from that now before us? Did not the Wife require the visiting her Person? Did not the Searchers conclude upon the same? Did not the Husband oppose it? Was not this all the Suit? In the Issue, an Inspection of the Wife was order'd. The Husband throws in an Appeal as for Wrong; but by Decree of the Parliament of *Rennes* 'tis said, there's

ere's no Wrong. The Wife is visited, found a Virgin, and the Marriage dissolv'd by a definitive Judgment, which the Husband durst not complain of.

I BRING another Precedent from the Parliament of Aix: I shew that in the Officialty of *Langres*, which is of the Jurisdiction of the Parliament of *Burgundy*, the same Practice is follow'd, and I confirm it by Evidences of the Process of the *Sieur Ver-*
on, which was no longer ago than last Year, 1711; Evidences all exemplify'd in good and proper Form. In fine, I produce the Actings of the Parliament of *Toulouse* and *Grenoble*, attested by the proper Officers of each County: And shall I after this be told, that the Proof of the Husband's Insufficiency by visiting the Wife, is an obsolete Proof, and out of use? I shou'd hardly forgive such frontless Assurance, but that I know 'tis the only Refuge of desperate Causes.

I DO not now believe it very necessary to repeat the Practice of the Canonists. I shall however in a word say, that the Gloss in a thousand Places knows no Proof more strong and efficacious, than that drawn from the Person of the Wife when she's a Virgin. Consult that Gloss upon the Canon, *nec aliqua*; upon the Canon, *requisisti*; upon the Canon, *si quis acceperit*; upon the Chapter, *Proposuisti*; upon the Chapter, *causam de prob.* upon the Chapter, *continetur de despons. impub.* and an infinite Number of others easy to be met with. When you have found them, you'll see that according to the Gloss the Proof of Virginity, *per aspectum corporis*, by Inspection of the Body, surmounts all other Proofs admitted by the Church: You'll at least find this Maxim, which is enough for us; *Probatis Virginitatis, quæ fit per aspectum corporis, potentior est probatio quæ fit per affirmationem viri*; the Proof of Virginity by Inspection of the Body, is stronger than any that can be given by the Report of the Husband: a Proposition which

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Panormitanus teaches upon the Chapter *Proposuit*, and after him all the Canonists to a Man: And 'twas impossible for any of 'em to wander from this Doctrine, since 'tis that of the Text which they interpreted.

WHAT remains for me to do after this, is, to defend this Custom against the Objections which are brought against it. Strange! that I must defend a settled Custom; that I must undertake the Cause of the Church, the Cause of the Canons, the Cause of all the Canonists, as if the Church, the Canons, the Canonists, and the Custom, were not to defend themselves by their own Authority.

First, they oppose to me the Opinion of some Physicians, who have fancy'd that Virginity was a thing that escap'd the Curiosity of Man, and was not to be known by any certain Mark; which they pretend to confirm by a Passage out of *Solomon*: But as for *Solomon*, we may lay him aside, since the reading of the Passage which they cite is contested. The *Vulgate*, which is the only Text the Church owns for authentick, does not compare a Woman to a Pavement of Free-stone, which may be walk'd upon without making any Impression; it does not say, *Quantum penitus ignoro, viam viri in ADOLESCENTULA*; the fourth I know nothing of, viz. *The way of a Man with a Maid*. It only says, that as it is impossible to mark the Way of a Ship that is toss'd at Sea in a Tempest, so is it impossible to follow Step by Step the Extravagancies of hairbrain'd Youth, which gives a loose to its Passions; *Quantum penitus ignoro, viam viri in ADOLESCENTIA*: The fourth I cannot understand, viz. *The Way of a Man in his Youth*.

As for the Physicians, things are come to a fine pass, if the Decisions of the Church, the Custom she has follow'd in all Times, and still follows, are to depend upon the capricious Speculations of a few private Men, vested with no Authority. What! be-
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cause one *Lodronchius*, one *Nanceius*, one *Ulmus*, one *Valesius*, one *Alfurius*, one *Fortunius*, one *Jonbartus*, have conceited in their Closets, that the Traces of a Man are lost, like those of a Bird raising it self into the Air; must we suppose the Church ill inspir'd, for believing that Virginity was not an impenetrable Secret? Must we hold the Canons for old Wives Fables, the Canonists for crack-brain'd Fools, the Custom of all Times, and the Practice of all Ages, for an Abuse founded on the strangest Mistake that ever was? Yes, I warrant you! We must reform the judiciary Method of the Episcopal Courts, upon the Idea of *Lodronchius*, or, in order to compose a new one, take Counsel of *Alfurius*.

I ADD, that most of those Physicians, whom they of the other Side produce for making the Marks of Virginity doubtful, are Men who say that it is not to be known by the Hymen: Supposing it were so, that does not hinder its being discoverable by other Signs. God forbid, Gentlemen, that I shou'd here descend into the Particulars of those Signs, which are neither fit for me to speak, nor you to hear. What I may say is this; *Zachias* himself, whom the Marquis de Gesvres has cited to establish his Proposition; *Zachias*, I say, tells you how to find out Virginity, in *Quest. 3. Lib. 3.* After having taught some Marks thereof, he draws this Conclusion, *Quamobrem si ultra hæc, quæ jam notavimus, signa, alia quæ jam notanda veniunt, apparebunt, non inane virginitatis judicium ferre licebit.* If besides these Tokens of Virginity, which I have already laid down, these other which I am going to speak of, shall appear, one may form a solid Judgment of the Case. This Author then held, that Virginity was cognoscible. But is he alone of that Opinion? Certainly, no: For we have on our Side *Senerinus Pinaus*, who made this Question his particular Study, in order for composing the Book we have of his *De notis Virgi-*

Virginitatis. This Author, who is of great Weight in the Physick-Schools, proves, *cap. 5.* That a Maidenhead discovers it self by undeniable Tokens; and afterwards he cries out, How is it possible that there should be still some among us, who suspect such manifest, such flagrant Proofs? But I am asham'd to have recourse to these foreign Doctrines: We are not now in a School of Physick: We have no Chirurgical Thesis to maintain. Therefore I apply myself to the Marquis de Gesvres, and ask him, Whether he pretends to be the first Impotent who maintain'd, that Virginity can't be known? If he will answer truly, he will own, that a thousand others, nay, to speak more exact, all those who have gone before him, have made use of the same Proposition. But did they better their Case by it? Not in the least; No one of 'em ever succeeded, in urging this false Principle. 'Twas in vain to call Rhetorick to its Aid; 'twas in vain to dress it, reinforce it; it was never look'd upon as any other than a fantastick Opinion sprung from the Contradiction of the School, and incapable of changing a Usage as ancient as the Church. I may therefore say to the Marquis de Gesvres, You make use of a Reason a thousand times prestrib'd, an Argument condemn'd and rejected as often as ever it appear'd, and a Doctrine equally set aside by the Usage of all Ages, and by the Authority of adjudg'd Cases in their latter Times.

IN short, I appeal to all Physicians, all Chirurgeons conversant in the practical Part, to all Matrons and Midwives, all who have Experience for their Master, whether it is not true, that the State of a Virgin distinguishes it self by Marks proper to it. The Book-makers may fancy the contrary, because they see nothing but Paper; but they who see something else, laugh at the Book-makers.

AFTER

AFTER this, the Marquis *de Gesvres* may press his Objection as much as he pleases, may talk his heart out, and say, that tho' Nature may have put some sensible Distinction between Virgins and other Women, that wou'd not hinder but Art might make counterfeit Virgins. Such Delusions are practis'd, says he: And there are Maidenheads, as well as Paints for the Face, to be bought at the Shops.

BUT if he had been ever so little acquainted with the Principles of Anatomy, he wou'd have known, that Virginity is only to be discover'd by certain Ligaments, which no Art can restore when once they are destroy'd: He wou'd likewise know, that Venal Virginity changes nothing but the Surface; and that by penetrating ever so little, 'tis presently seen whether 'twas bought at the Market. I add, there are Compositions which make the Mask fall off. And herein I say no more than what I have gather'd from many Masters of the Art, and there's no manner of likelihood that they impos'd upon me; for otherwise the World must have been bubbled for fourteen or fifteen hundred Years, by a fallacious Experience; which I take to be impossible.

BUT furthermore, says the Marquis *de Gesvres*, (and here behold a second Objection) Why must the Wife be expos'd to the prying Enquiries of the Searchers, when the Husband does not consent to it, since 'tis what was never done without such Consent? To which I answer, that that Law which makes the explicating of Virginity depend upon the Will of a Husband accus'd of Impotency, is a Law made by some Impotent; and there's a great deal of Reason to think we are beholden for it to the Marquis *de Gesvres*; for I don't find it in any of the Books.

I SAY further, This Law, if it were in any Code, wou'd merit the publick Derision; besides, that it were impertinent to submit the Allowableness of a Proof to the good Pleasure of him against whom

whom it is propos'd. 'Tis certain, the Husband would never permit the diving into the Secret, but when he was sure of Success, and when by indirect Ways he had eras'd in his Wife's Body the Tokens of her Virg'nity. And thus the Examination of the Searchers would no longer serve to prove that the Wife is a Virgin, but only that she is not a Virgin. And yet he who proves that his Wife is no Virgin does not prove that he himself is a capable Husband; for other People might have cropt the Flower of her Maidenhead; and by this means the Inspection would never be us'd, but when nothing could be concluded from it; whilst it was refus'd to be made use of in the only Case where it could be a Proof.

If you please to observe, Gentlemen, there's a great Difference between a Wife who says *I am a Virgin*, and a Husband who says *my Wife is not a Virgin*. If the Wife speaks true, 'tis a hundred to one but the Husband is Impotent, because none but an Impotent can leave the Virg'nity of a Wife subsisting. But if 'tis the Husband that speaks true, the Consequence which flows from the Wife's Condition has hardly any Force, and 'tis then but an even Wager that the Husband is capable. I know very well that in case of doubt, the Husband, rather than any other, is suppos'd to be the Person that has brought an Eclipse upon the Virg'nity. But in short, if the Scale turns for the Husband, he is more beholden to what is call'd *favourable Interpretation*, than to strict Reasoning; and in truth, a Virg'nity lost proves but very imperfectly the Husband's Perfection; whilst a Virg'nity not lost, carries with it a moral Certainty of his Imperfection, or, if you will, of his Insufficiency.

As therefore, according to the Marquis de Gesvres's new Principle, the Virg'nity would never be search'd for, but when 'twas no longer in Being, whilst there was no Search to be allow'd when it was in Being; it would follow that the Church would never have re-

course

course to that Proof, but when 'twere useless, and without Consequence, whilst it wou'd not be permitted to make use of it, when it might produce a certain Consequence.

BUT why do I battle this ridiculous Paradox with reasoning? Have I not before destroy'd it transiently, when I instanc'd those Sentences and those Decrees, which upon the bare Request of the Wife, and in spite of the Husband's Resistance, have made or approv'd such interlocutory Orders as I contend for? Is it for Example likely, that the Husband, whose Cause is reported in *Anne Robert*, did voluntarily deliver up his Wife to the Searchers, he who makes it the ground of his Complaint, that the Sentence of the Official had deliver'd her up? He who look'd upon a Virginitie, subjected to the Inquisition of Matrons, as the greatest and most enormous of all Abuses? Do we find in *Tagareau* and *Hotman*, that the Wives before they offer'd themselves to be inspected, did humbly beg Permission of those Husbands whom they charg'd with Impotency? Do we find that *Carola* consented to the Visitation of his Wife? We find it indeed in the printed Book of *de Combes*, but in the Office-copy of the same *de Combes*, we find the contrary. For the Sentence which he has exemplify'd for us, makes appear that the Visitation of the Husband and Wife was order'd by the mere Motion of the Official, independently on the Consent of the Parties. As for *Hubineau*, 'tis manifest he never consented to the Inspection of her who arraign'd him of Impotency, and that it was order'd for no other Reason, but because the Wife offer'd her Body thereunto, and demanded it juridically, that is, in Court. This I have demonstrated by the Sentence it self, which begins with these Words, *The Plaintiff requires this to be done*: And this is what gave Occasion to the Appeal which was unprofitably, and to no purpose, thrown in by the said *Hubineau*. The same may

may be said as to the Precedent *de Bretagne*. So far was the Inspection from being order'd by Consent of the Husband, that the Pleadings of the Husband were to no other Purpose but to prevent it. This was the only Question between the Wife and him, first before the Official, and afterwards in the Parliament of *Rennes*.

THE Marquis *de Gevres* is so unfortunate in Maxims, that, to find out the sound Doctrine, a Man must take the reverse of the Propositions he advances. So little does the Proof of Virginity depend upon the Husband's Consent, that it depends solely upon the Consent of the Wife. An Inspection is never order'd, but when the Wife sets forth that she's a Virgin, and submits to verify it. The Reason is, because the Evidences of Virginity are subject to more than one Accident; and as none but the Wife can know whether hers has escap'd those Adventures, the Rule will have it that the Judge do, before all things, assure himself from her Mouth how Matters stand. She must first be ask'd in what Condition are her Evidences, and then whether she's willing to expose them; without this Precaution the Proof would have no Force, because the Wife being found no Virgin, might impute the Loss of her Virginity to some Misfortune; which she can't do, when before the Inspection she has precisely set forth, and articulated the Integrity of her Condition; and it was for this Reason that the Official very carefully enquir'd of *Hubinzeau's* Wife, whether she pretended to be a Virgin, and whether she consented to have her Body visited. But to proceed to another Objection made by the Marquis.

I GRANT, says he, that sometimes the Visitation of the Wife may be order'd; but it never was but in Cases where the Husband retorted upon her the Accusation of Impotency, by charging her with some Viciousness of Organization; and if then the
Wife

Wife is to be yielded up to be examin'd by Searchers, is not in order to judge of her Virginity, but to know whether or no her Configuration is fit and apt for the Intimacies of her marry'd Condition. Now, adds he, I don't tax *Madam de Gefures* with any Defect of Configuration. *Ergo*, we are not in the Case where her Inspection may be order'd.

I ANSWER, That in all the foregoing Examples, the Wife was not subjected to the Visitation for any other account, but to put the Searchers in a way of knowing whether she was a Virgin, and from thence judging of the Husband's Frigidity. *Cajola*, for Example, did not hang upon the evil Configuration of his Wife, since he pretended to have consummated. So it was with *Hubineau*, who likewise flatter'd himself with several Consummations; and in short, so it was in the Affair of *Bretagne*: The Wife offer'd her self to the Visitation, and requir'd it, for the sake only of ascertaining her Virgin State, and thence concluding the Impotency of her Husband. The Husband, on his part, did not impute to the Wife any Viciousness of Configuration; and yet the Judge nevertheless for that expos'd the Person of the Wife to the Inquisition of the Searchers.

BUT to leave no Scruple remaining, we will wipe out even the very Colours with which the *Marquis de Gefures* can possibly varnish over his Illusion. It is true, in well-regulated Courts, the Sentences which order such Visitations, do not in express Terms say, that they seek to know whether the Wife be a Virgin; but the sole Intent of that Precaution is, not to bring in question the Honour of the Wife. For as the Seal of Virginity is various ways effac'd, its Eclipse, tho' perhaps innocent, might give a Handle to Calumny, if on the one side there was a Sentence which expressly constituted the Searchers Judges of Virginity, and on the other a Report assuring that her Virginity was vanish'd. This Reflection I borrow

row from *Peuret*, and 'tis to avoid this Rock that in the Officialties they abstain from saying, *View if this Woman be a Virgin*, and only say to them, *View this Woman*, and nothing more; or if the Judge for colouring his Sentence, has a mind to present some Object, he supplies of his own accord, as he can, the Impossibility of a respective Impotency, or of a vicious Organization in the Person of the Wife; and then he orders that the Wife shall be visited, *to know from which Side comes the Insufficiency*. But these Words, *to know*, &c. in this Case serve for nothing but a Pretext. For the Judge's true Object is to satisfy himself, whether the Wife be a Virgin; and this appears from the Execution of the Sentence; for whether it runs purely and simply, as is practis'd in this Officialty, *that the Wife shall be visited*, without saying wherefore; or whether adds, as is the Practice at *Rennes*, *to know from which Side comes the Insufficiency*; in both Cases the Searchers equally apply themselves to examine, whether the Evidences of Virginity speak for her or against her; and according to their Depositions, they determine *pro* or *con*.

ALL that I have been speaking, is no more than a Deduction from the Precedents above-cited. In the Affair of *Hubineau*, you order'd, Sir, that *the Wife should be visited*, without further explaining your self. In the Affair of *Rennes*, the Official order'd she should be visited, *to know from which Side came the Insufficiency*. Yet respective Impotency was not alledg'd on either Side; but the prudent Silence of the first of those Sentences, and these Words of the second, *to know from which Side comes the Insufficiency*, did not hinder the Searchers from bending their whole Application to enquire into the Tokens of Virginity; and because they found them entire in the two Women, they were dis-marry'd.

BY this I make it appear, that the whole Objection of the *Marquis de Gesvres* turns upon a Nicety

Stile, which consists only in the Terms, and which makes no Alteration in the main, as appears from Custom and Usage. I pass therefore to the Examination of the other Propositions, and come to the third and Argument on which all the Hopes of the contrary Side are built.

WE have been told, that the Virginity of a Wife is not a demonstrative Proof of the Husband's Impotency, that it may indeed be a Proof that he did not quit himself of his Duty: But perhaps he had no Mind to acquit himself of it, and then it was the Will and not the Power he was wanting in; wherefore to render a Marriage void, the Power must be incapable of seconding the Will; but because the Marquis *de Gesvres* is aware of being answered, that a Man who brags of so many Consummations, cannot plead Want of Will, he forestals the Objection, and says, that we must not take his Word in the Case; that he perhaps impos'd upon the Church, when he gloried in so many Atchievements; that perhaps he did not even go so far as Attempts and Approaches; that he is always at Liberty to retract; that in truth he does not yet retract; but whether he retracts or not, it is never allowable to risk a great Sacrament upon the Credit of a Declaration of one of the Parties, who may have had his Reasons for deceiving the Church.

WERE I minded to shew how false this Principle is, that in Questions of Impotency, the Church never rested upon the Faith of the Parties confirm'd by their Oaths, nothing cou'd be more easy for me to do: I shou'd need only to run over the different Chapters, which compose the Title *de Frigidis*, and especially the fifth and last; I need only make use of the Canon *Requisiti*, and some few more, to the same Purpose: But as the Marquis *de Gesvres* knows neither Canons nor Decretals, I will argue against him from other Principles.

AND

AND first I ask him, If his Argument is strong, so conclusive, so invincible, how comes it Body ever made use on't till now? 'Tis certain, had it been unsurmountable, there had needed no more than to propose it, to have put a Stop to all those Visitations which have been order'd for 1500 Years. It is certain, that all the Sentences which have look'd upon the Wife's Virginity as a certain and concluding Proof of the Husband's Impotency, would have been ridiculous and abusive; certain, that all the Decrees which have authoriz'd the Execution of those Sentences, would have had nothing but Paralogism and Error for their Foundation; certain, that Pope Gregory VIII. who consider'd the Husband of a Virgin as a convicted Impotent, must have been abandon'd by Reason, and consequently by the Holy Ghost; certain that the Church, who receiv'd from him this Lesson, and has practis'd it in all times might be compar'd to the Blind led by the Blind; certain, in short, that all the Canonists, all the Prelates, all the Officials in the World wou'd have been under a long and absolute Delirium and Dotage. Now when an Argument produces such strange Consequences, and at the same time so impious and blasphemous, the greatest Honour we can do it, is to regard it as one of those acute Subtilties, which the human Wit does sometimes squeeze from the Torture it gives it self.

BUT independently of this Prejudice, we must examine this Phantom a little nearer, and see if it can bear to be star'd upon in the Face.

ITS whole Strength rous upon the Uncertainty of the Cause, which has preserv'd the Virginity of my Client. Is she beholden for it to the ill Humour, or the Impotency of the Marquis de Gesvres? Is the Husband upon this Occasion a Debtor, who does not love to pay, or a Debtor absolutely incapable of paying? This is the whole Difficulty.

TO make a Judgment of it, we need only examine whether he has attempted to consummate; for if he attempted it; and at the same time has not succeeded, 'tis certain the Uncertainty ceases; and that 'tis no longer to ill Humour but Impotency, the Virginity ought to be ascrib'd: We can no longer consider the Marquis de Gesvres as an ill Pay-master, but a broken insolvent Debtor.

TRUE, say they, but then you must prove that the Marquis de Gesvres has attempted; and 'tis not enough to prove it out of his own Mouth, since 'tis oppos'd for a Principle, that he is not worthy of Credit: His Attempts must be made out otherwise than by his own Declaration. Thus then the Dispute is, whether I prove the Attempts, and how I ought to prove them.

NOW this being so, I ask, whether I ought to have prepar'd a Notary and Witnesses to draw me up a Writing of the Marquis de Gesvres's Approaches? Or ought I to prove those Approaches by the Testimony of his Domesticks? I don't believe, Gentlemen, that they can hold me to a Proof that wou'd degenerate into Madness, and you are, *prima facie*, sensible of the Consequences of it; for you easily comprehend, that if such Proofs could be demanded of me, it wou'd be rendring all the Accusations of Impotency impracticable; it wou'd, to speak properly, be abolishing 'em.

WHAT then is the Proof that can be requir'd of me? Even no other than that of *Condormition*. Parson me this Term; it is a Term of Art, and us'd in the Language of the *Rota*, to signify the nocturnal cohabitation of a marry'd Couple in the same Bed. I am therefore to prove, that I have pass'd whole Nights with the Marquis de Gesvres between a Pair of Sheets: But that I shou'd be oblig'd to report in a verbal Process what was transacted between those Sheets, is what even Extravagance it self cannot

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exact,

exact, either of me, or any other woman in the same Circumstances.

WHA T I say, Gentlemen, I don't say from my own Head; and tho' the Light of Reason alone ought to be a sufficient Passport for my Proposition, yet I ought not to neglect the Assistance which is offer'd me from Authority. Hear then the Words of the 48th Decision of the Rota among those which have been added to the new Edition of *Zacharias*; *Quod conjuges*, says the Rota, *incubant operi nuptiali, satis probatur, si constet conjuges habitasse in eodem lecto*. It is Proof enough, that married Persons have applied themselves to their Duty, if it appear that they have lain together in the same Bed. Thus, so soon as it is manifest that the marry'd Couple have possess'd the same Bed, *habitasse in eodem lecto*; it is likewise manifest, either that they have consummated, or that they set about it, *satis probatur quod incubant operi nuptiali*.

THE *Rota* supports this Maxim with nothing but the Authority of *Hofiensis* upon the Chapter *Inter-nitatis*; but I am going to confirm it with a formal Text, which is the Chapter *Litteris de Præsump.* Take the Case as follows:

A WOMAN is surpriz'd, lying Side by Side in the same Bed with a Kinsman of her Husband's, but she is not taken doing the Deed: The Question is Whether, from the Circumstances she was found in, can with Certainty be inferr'd a Consummation of Adultery. For supposing the Adultery consummated, the Wife cannot without Incest join her self again to her Husband: And in that Case, the Necessity of avoiding Incest, gives Occasion to the Separation of the Husband and Wife. Now the Pope decides, that the Adultery ought to be held consummated, only from the stolen Cohabitation of two Persons of different Sexes in the same Bed, provided those Persons had put themselves in the Condition which

the Lady de MASC RANNY. 75

which People put themselves in when they go to Bed, *solus cum sola, nudus cum nuda*. The Terms of the Decretal are as follows: *Consultationi tue taliter respondemus, quod ex hujusmodi violenta & certa fornicationis suspicione potest divortii sententia promulgari*. To your Question we make this Answer, That upon such a violent and certain Presumption of Uncleanness, a Sentence of Divorce may be pronounced.

THE Argument which is drawn from the Condition in which these two Persons were surpriz'd, is here called only Presumption, *suspicio*: But because this Presumption is not only violent, but infallible, *violenta & certa*, the Pope judges it sufficient to ground a Sentence of Divorce, *potest divortii sententia promulgari*. 'Tis then a Principle, that even among Persons who have no mutual Obligations to each other, *Condormition* proves a Consummation of a Sin: Therefore, with greater Reason, between two marry'd People who are bound to a mutual Performance of conjugal Benevolence, it ought to be a Proof either of Consummation, or of Endeavours towards Consummation; and if it were not so, Accusations of Impotency wou'd have no Issue, *res non haberet exitum*: It wou'd be like the Bottom of a Bag: you might indeed enter, but cou'd not get out again but by the same Way you went in; which wou'd be doing just nothing at all.

AND this is the Reason why this mighty Argument, of whose Appearance this is the very first Day, durst never yet shew it self. This is the Reason why it has been neglected by all Husbands arriv'd of Impotency, who were minded to hinder the Secret of Virginity from being explor'd. This, in short, is the Reason why such Proof of a Husband's Insufficiency as is supply'd by the Wife's Person, is a concluding Proof justly introduced by the Canons, and justly admitted by the Church. If the Church is content with it, 'tis enough, tho' it cannot

be call'd a Geometrical Demonstration, because there is no Geometrical Demonstration for Facts, much less for Facts that pass in Secret: Therefore such Presumptions as are violent and infallible, *certainly* *violenta*, are sufficient.

I DON'T believe, after this, that Incredulity itself can go such a length, as to doubt that the Parties were in Bed together during this Cohabitation. If any were capable of stretching their Superstition so far, it would be no difficult Matter for me to satisfy that Scruple. I could produce as many Witnesses as the Duke de Tremes, or the Marquis de Gesvres have Domesticks. But, once again, I don't believe any body can be so excessively incredulous. Now, if *Condormition* suffices to remove Doubt as to Efforts 'tis to no purpose to tell me, that the Marquis de Gesvres's Answers in his Interrogatory are of no Weight; for it is not from those Answers I bring my Proof. I bring it from *Condormition*, which produces in my Favour a legal Presumption, on which the Judges ought to rest, since the Law rests upon it. Not that (the Affirmation (which the Marquis made in his Interrogatory, when he told the Church he had consummated,) ought to be absolutely set aside as an Evidence altogether useless: For it would be arguing like Idiots, to say, that when a judicial Confession does not of it self make a compleat Proof it serves for nothing: It at least serves for a grave and violent Presumption, till the Marquis de Gesvres vouchsafe to make out that he has deceiv'd us, and told us an Untruth. It is not an invincible Proof because it may be baffled by contrary Proofs: But as long as there shall be no particular Reasons to render it suspected, it is to be look'd upon as sincere and true, at least so far as it proves Efforts and Attempts.

I ASK then the Marquis's Partisans, (for 'tis they who retail abroad this Argument, which I fight against: 'Tis they who din us in the Ears with

Language

Language which makes us shiver, and who incessantly tell us, that the Marquis *de Gesvres* is an Impostor, and a perjur'd Man :) I ask them, I say, what their Reasons are for honouring that young Nobleman with such pretty Epithets. What! is it a thing incredible, that the Marquis *de Gesvres*, passing whole Nights with a lawful Spouse, should attempt to consummate his Marriage, when such Consummation secur'd him Seventy thousand Livres annual Rent? Surely, tho' the Marquis had not said it, we ought to hold his Attempts as certain. With how much stronger Reason are we withheld from doubting it, when his Confession agrees with the Probability resulting from the thing it self? But let them give his Confession what Force they please, we have *Condormition*, and that's enough for us, because *Condormition* is a Proof built upon two unmoveable Foundations, Necessity and the Law. Necessity, because 'tis impossible otherwise to penetrate the secret History of a Marriage: Law, because of the Force it imparts to all Proofs which it espouses, or (to speak better) canonizes.

THIS being so, I say that the Proof which will redound from the Virginity of my Client, will be a conclusive Proof. The Law has coupled the Proof of Approaches to that of *Condormition*: Therefore the Approaches are manifest, so soon as *Condormition* is made out; and if they are manifest, it is as manifest that my Client's Virginity is not an Effect of Contingency, but Impotency, in the Marquis *de Gesvres*.

BEHOLD therefore the Marquis *de Gesvres*'s Frigidity, ready to be made manifest by the Visit I demand; and if he tells me, that Frigidity is not evidenc'd till after three Years Cohabitation, and that he wants some Months of three Years; I answer, He's deceiv'd; and that even according to the Canons your Cause is none of those which require a triennial Cohabitation. But because this is a Point of Importance

tance enough to merit a particular Discussion, I intend to handle it separately.

AFTER this, Whither can the Marquis de Gesvres fly for Refuge? He has been shewn, that Frigidity in general is nothing but a Configuration naturally and habitually cold; and therefore that it was impossible to adjudge his particular Configuration to be exempt from Frigidity, for the single Reason of its being a Configuration.

HE has been shewn, that all the Physicians, all the Canonists have admitted it for an undeniable Principle, that Configuration does not reach so high in point of Proof; that none of 'em has presum'd the contrary Paradox could be advanc'd; nor that any Body ever made a Tender of motionless Organs for Warrants of Virility.

HE has been shewn, that in all times, and according to the Testimony also of those who have written upon this Subject, Figure without Motion, never went for more than a Body without a Soul.

HE has been shewn, that it was upon this Foundation his Configuration was rejected by our Searchers.

HE has been shewn; that after this Rejection, he could not produce the least Degree of Proof in his Favour; no, not so much as Presumption; doublets, because the Searchers Objection was a Judgment pronounc'd upon his particular Person, and particular Proofs always surmount general ones, which are no more than Presumptions, or rather Common-Places.

HE has been shewn, that even supposing he could make his Configuration pass for a general Presumption, such Presumption cannot hinder my Client from being admitted to prove the contrary by the Visitation she asks; and this, by the very same Rule I just now mention'd, viz. general Presumptions always bow the Head to contrary Proofs.

HE has been shewn, that the contrary Proof resulting from the Visitation offer'd and demanded by

my Client, is a canonical Proof us'd in the Church in St. Cyrian's Time, confirm'd by like Usage from St. Cyrian to Gregory VIII. authoriz'd by that Pope, and perpetually practis'd from his Time to ours.

HE has been shewn, that if such Proof is of some Cost to Modesty, it wou'd cost Modesty infinitely more, if she were to remain perpetually expos'd to the Sallies of an Impotent, which are so many Sins against Nature.

HE has been shewn, that an Examen, which is necessary to put a Stop to the Prophanation of a great Sacrament, is no Offence to the Dignity of that Sacrament; and that on the contrary, the more venerable the Sacrament is, the more necessary is such an Examen.

HE has been shewn, that the Tokens of Virginity are not Ideal and Chimerical; that they are founded upon the most assured Demonstrations of Anatomy, taught by *Zachias, Pineus, Moriceau*, and infinite Numbers of others. And that if the Spirit of Contradiction (which is what all the Dust of the School is rais'd from) has put some Speculative Heads upon coining in the Gloom of their Closters some new Opinions upon this Subject, it wou'd be a ridiculous thing to condemn all Antiquity upon the Credit of their Ideas; and yet more ridiculous to abrogate our Laws, our Canons, our Usages, our Practice, and Judicial Proceedings, for the fantastick Meditations of some private Doctors.

HE has been shewn, that not any of the Episcopal Courts of *France* have suffer'd themselves to be bully'd by the Noise these Innovations have made in the World; that in the Jurisdiction of the Parliaments of *Aix, Grenoble, Dijon, Toulouse, Rennes*, the Practice of verifying the Husband's Impotency by the Wife's Virginity, was as common a Practice as that of verifying a local thing by a View of the Place; and there's no doubt but the same is done in all the other

Parliaments, since the Abolition of the Congress does no longer leave any other Door open but this to come at the Truth. As for the Parliament of *Paris*, and this Officialty in particular, the Examples which have been brought to make out this Usage, are so evident and decisive, that the subtillest Head in the World cannot find out the minutest Difference between their Case and ours.

WE have likewise shewn the Marquis de *Gesvres*, that he set up a false Principle when he advanc'd, that the Secret of Virginity cou'd not be meddled with, unless the Husband consented, that this Principle (as well as all the others which he has broach'd,) took rise from nothing but an Imagination grown ingenious by Necessity, that to admit such a Doctrine, one must have lost one's Reason; and that accordingly the foregoing Precedents are enough to shew, that the Judges consult none but the Wife, when the Point in Dispute is, whether the Proof of Virginity shall be admitted.

HE has been shewn too, that taxing a Wife with a vicious Organization, is not the only Case wherein it has been the Custom to subject her to Examination; and that she is no less subject thereto, when the Business in hand is solely to know, whether she be a Virgin, thereby to evince the Husband's Frigidity.

To conclude, it has been shewn that this Consequence is direct and conclusive; *the Wife is a Virgin, therefore the Husband is insufficient*; at least that it is conclusive, when the marry'd Couple have pass'd whole Nights in the same Bed, because then the Attempts of Consummation are evidenc'd by a legal Presumption, which stands in the Place of a Proof, when 'tis consecrated by an Ecclesiastical Law, and impossible otherwise to discover what happen'd within the Curtains.

YOU see, Gentlemen, my whole Cause in this short Recapitulation. But that I may present it to

you

you in a yet plainer Epitome, What is it we dispute about? Nothing in the World but to know whether a Proof tacitly or expressely demanded by the Searchers, ought to be order'd. Behold the whole Point, behold the whole Difficulty. A Man must surely be a Duke and Peer, to make this Question a Subject for a Problem. The Marquis de Gejres desires his Cause may be try'd by the same Rules, as are observ'd in the Cause of a private Citizen. I desire the same with all my Heart; but at the same time, I beg he wou'd shew me by any one Precedent in a Plebeian Case, that you ever refus'd to Searchers an Order like that I demand. I will be bold to say, 'tis a Thing unheard of, because the Searchers are the *premier* Judges, and because, as the *Rota* in one of its Decisions says very well, the Conscience of the second Judges wou'd have too much to take upon it self, if in a thing of so great Consequence, it were not to disburthen it self upon the Shoulders of the first Judges: *Nimis enim oneratus esset iudex, si in tam gravi questione aliquid ex ejus judicio penderet.*

AFTER this, it were orderly to say something in Justification of my Client. For tho' her Request be grounded upon the Rules of the Church, yet that does not put a stop to the wrong Judgments and rash Censures of the World. There are Women vain enough to fancy, that had they been in my Client's Circumstances, they shou'd have preferr'd an honourable Silence to a Noise ever subject to Interpretation; but without examining what they wou'd have done, I say it is irreligious to be silent on such Occasions. I grant that when a Husband confesses his Infirmary, when he renounces the Conjugal Way of living, and reduces himself to a fraternal Amity, the Patience of a Wife may deserve the Name of Virtue, tho' the Practice of that Virtue is not without its Dangers. But pray, had my Client the Liberty of chusing between the fraternal Life, and the Step she

has taken? Let them judge of it, who know that the highest Ambition of the Marquis *de Gesvres* is to seem what he is not; This occasion'd the frequent *Condemnation*: This oblig'd him to put my Client within the Curtains; and this Cohabitation within the Curtains wou'd still torment the Conscience of my Client, had she not the Sanctuary of a Divorcement to fly to. Let the People of Gallantry, the loose, the irreligious, blame my Client: 'Tis their Trade; it ought not to be wonder'd at. But if that Religion which they are unacquainted with, had shewn them a Gulph always gaping, and themselves upon the Brink of that Gulph, and always ready to fall into it, unless they were continually flinging themselves out of Doors, they wou'd find that the greatest Constancy wou'd at last be tir'd out; and that to think to avoid the Gulph by such withdrawals, wou'd be attempting to swim over the Ocean.

I TAKE no notice of the other Reasons independent of Religion, which left no room to deliberate upon the Course my Client had to take. 'Tis enough that the Publick is appriz'd of them, and that the deplorable Condition she has been reduc'd to, by living with the Marquis *de Gesvres*, furnishes Chat for the Tea-tables of *Paris*. Content with the Justice done her by the World on this Head, she is desirous to draw the Curtain over so melancholy a Story, thereby to make the Marquis *de Gesvres* sensible, that she reveres even the Figure of a Sacrament, and honours the Embers of the Fire with which she once burn'd for him; nay, with which she had still burn'd, if the Ignorance and Simplicity of her unripe Years cou'd have always lasted, and if the Prisons of *Paris*, *St. Owen*, and *Gesvres*, cou'd have perpetuated so desirable a Condition; but alas! there's no guarding against the Lessons of Nature, a Mistress who disappoints the most watchful Spies.

To conclude; the Marquis de Gesvres has nothing to complain of but his own Misfortune: His ill Fate is really to be pity'd. My Client pities him, and perhaps more than he pities himself. She would be glad he were able to silence either the Laws of Nature, or those of Conscience: In either Case, she were ready to unite her self again to him.

M. BEGON, Counsellor.

BENARD, Attorney.

INTERROGATORIES of Monsieur and Madam de GESVRES: With proper Notes and Reflections upon the principal Articles.

T E X T.

INTERROGATORY upon Facts and Articles, exhibited by us ANTHONY DORSANNE, Priest, Doctor in Theology of the Faculty of Paris, Canon and Arch-deacon of Josas in the Church of Paris, Official of Paris, by Virtue of our Order of the 16th Instant, at the Request of Mademoiselle MARY-MAGDALEN-EMILIA de MASCRANNY, assisted as much as is requisite by Madam de CAUMARTIN, and the Sieur Abbot de MASCRANNY, her Guardians ad hoc, Plaintiff.

Wednesday, April 20. 1712. at Eight in the Morning in the Bishop's-Court.

ARTI-

TO conclude the Matter of Oathes has nothing to do with the Matter of the Oathes. His Honor has nothing to do with the Matter of the Oathes.

ARTICLE I.

CONCERNING his Name, Surname, Age, Quality, and Habitation, after having taken an Oath to deliver the Truth.

SAys his Name is *Joachim-Bernard Potier, Chevalier, Marquis de Gesvres, Colonel of Horse, &c.* aged Nineteen Years and a Half, living in the Street *St. Augustin*, in the Parish of *St. Roch*.

H.

WHETHER there was not a Marriage contracted and celebrated between him the Respondent, and the said *Mademoiselle Mary-Magdalen-Emilia de Mascrany*? How long he has been married to her, and whether his Marriage is valid?

SAys, That 'tis true that there was a Marriage celebrated and contracted between him the Respondent, and the said *Mademoiselle Mary-Magdalen-Emilia de Mascrany*; that the Marriage was celebrated the 3d of June, 1709. and thinks the said Marriage very valid.

III.

WHETHER before he was married, he was appriz'd of the End and Purpose of Matrimony?

SAys, Yes, that he was very well appriz'd thereof.

IV.

WHETHER, since his Marriage, he has done as much as in him lay to arrive at the Purpose of the said Marriage, and whether he has consummated it?

SAys

* SAYS, That at present he can answer to no more of the Articles of the said Facts, forasmuch as they were not left at his House till yesterday, at Eight

* If the Marquis de Gesvres had really consummated his Marriage, wou'd it have been more difficult for him to remember it, than to remember his Name, his Age, his Quality, and the Day on which his Marriage was celebrated? Why then does he demand Time, unless it be either because 'twas not easy to determine so hastily between the Interest of his Cause, and that of his Conscience; or because it was a slippery Step, and that the Answer he made to that Article being to govern all the following, the Question deserved to be well consulted in an Assembly of his Relations, and in Presence of Council. Thus when the Marquis de Gesvres demanded a Delay, 'twas all one as if he had said, You ask me whether I have consummated my Marriage? Truly, I can't tell: but hard by there's a Cunning Man that knows all; I'll ask him, and in three Days give you an Answer.

In vain he excuses himself upon account of the Multiplicity of the Facts; for that not having hinder'd him from answering to the three first Articles, neither ought it to have stop't him at the fourth, which was still more personal than all the rest.

But if we are desirous to know why he hesitates, we need only see by the Interrogatory of Madam de Gesvres, why she does not hesitate. She was made acquainted with the first Facts on the 19th of September, to be interrogated early next Morning; she presents her self at the Hour appointed; and whilst she is still before the Official, they ask her new Questions to be answer'd upon the Spot. Nothing could be better managed to perplex her, or to surprise a young Lady that was almost dying: for every body knows that her Sickness gave her no Respite. Yet, does she

Eight of the Clock in the Evening, and that coming home very late, he knew nothing of the said Interrogatories till Morning; wherefore he demands a Delay of three Days to consider them, because of their Multiplicity.

UPON which, at his Request, we made an Appointment for next Saturday, at Eight in the Morning. THE present Interrogatories and Answers being read over, he says they contain nothing but the Truth, insists upon 'em, and has signed them. Signed Dorfanne, & de Combes, Register.

she desire Time? Far from it: She would not accept of the Respite which the Official offered her, and she takes no more time to study for Answers, than whilst he can read over the new Facts. Who inspired her with this Courage, or what could so much disconcert M. de Gefvres at the sole Word Consummation, let any one judge.



INTER-

INTERROGATORY made by us ANTHONY DORSANNE, &c. Official of Paris, by Vertue of a Sentence of the 16th Instant, at the Request of Mademoiselle MARY-MAGDALEN-EMILIA de MASCRANNY, assisted as much as is requisite by Madam de CAUMARTIN, and the Sieur Abbot de MASCRANNY, her Guardians ad hoc, Plaintiff.

Saturday, 23d of April, 1712,
Eight in the Morning.

ARTICLE I.

CONCERNING his Name, Surname, Age, Quality, and Habitation, after having taken an Oath to deliver the Truth?

SAYS, His Name is *Joachim-Bernard Potier*, Chevalier, Marquis de Gesvres, &c. aged Nineteen Years and a Half, living in the Street *St. Augustin*, in the Parish of *St. Roch*.

IV.

WHETHER, since his Marriage, he has done as much as in him lay to arrive at the End of the said Marriage, and whether he has consummated it?

SAYS, He has.

V.

WHETHER it be not true, that finding himself unable to consummate the Marriage, he spent the first Night in complimenting his Wife, without going about to consummate it, giving her to understand he was very much incommoded in his Stomach, by having eaten part of an Eel Pye?

SAYS,

* SAYS, That that Night, finding himself very much out of Order with a Sickness at his Stomach, occasion'd by having eaten part of an Eel Pye, he did not consummate the Marriage that Night.

VI.

WHETHER he does not know that his Valet de *Chambre*, who undoubtedly was some how inform'd, that he the Respondent was unable to consummate the Marriage, said the next Day to one of the Chamber-Maids of the said *Mademoiselle de Mascranny*, That he did not think his Master had consummated the Marriage, because he had heard say that his Cod piece was tied up, which is a sort of Sorcery?

SAYS, That he knew nothing of it, and that he thinks it is forg'd.

VII.

WHETHER it be not true, that the next Day after he was married, being uneasy to find that he was unable to consummate the Marriage, he pretended to be Sick; and the better to make the said *Mademoiselle de Mascranny* believe so, affected, at his Arrival at *St. Owen*, whither they went to spend part of the Day, to lie on the Bed till Eight in the Evening, when he rose to a Collation?

* The Impotent never accuse Nature, but the first Accident that presents it self to their Imagination; and when nothing presents it self, 'tis the Devil that causes their Disgrace by the Interposition of some Sorcerer. If *Monsieur de Gelves* had dared to accuse the Devil, the Eel-pye had been very innocent, and 'tis easy to see this by the Impossibility there is, that a Meat, which is indeed no wise hurtful, should, on the Wedding-Night, have such a prodigious Effect upon a young Man of 17 Years old.

* SAYS,

* SAYS, That 'tis true that his Illness continuing all the next Day after he was married, he was obliged, when he arriv'd at *St. Owen*, to throw himself upon the Bed.

VIII.

WHETHER it be not true, that being returned to *Paris* at ten a Clock that Night, he retired into his Apartment, where he lay alone, for fear that if he shou'd lie with the said *Mademoiselle de Mascranny*, she shou'd perceive that his Illness was feigned; and that to hinder her even from enquiring into his Health, he had the Precaution not to let her know that he wou'd not lie with her, which made her pass the Night without Sleep, and in continual Disturbance, lest she had given him Cause to be discontented?

SAYS, That it is true that his Illness continuing, he made *Madam de Gesvres* acquainted with it, and went to lie in his own Apartment.

IX.

WHETHER it be not true, that perceiving that *Mademoiselle de Mascranny* did not know what was the Duty of married People, or the Consummation

* The *Marquis de Gesvres* was so little troubled with his Illness all the next Day after he was married, that he eat all his Meals as he was used to do. He imitated the sick Man in nothing that was a Self-denial; and if he lay on the Bed all Day, it was both because he was desirous to give the World a good Opinion of the Fatigues of the preceding Night, and to get an Excuse for lying alone the next Night. To put on Airs of Ability, and to lie alone, being the greatest Happiness of an Impotent. And to gain this, it was worth while to put a little Constraint upon himself all Day.

of Marriage, he turned her Ignorance to his own Advantage, and spent the following Nights, *Monday* and *Tuesday*, in making her new Protestations and Compliments, and in embracing her amorously, without going about to consummate the Marriage?

* SAYS, That the Fact is false, and that he consummated the Marriage, *Monday* and *Tuesday*; that as to the pretended Ignorance of the said *Mademoiselle de Gesvres*, he thinks he needs say nothing upon that Article.

X.

WHETHER it be not true, that the said Respondent, setting out for the Army at Ten-a-Clock, on *Wednesday* Morning, testified all the Tenderness imaginable to the said *Mademoiselle de Mascranny*, and how sorry he was to leave her; and to give her more sensible Marks of his Friendship, writ to her during his Absence, two or three Times a Day?

* Is not this Portrait expressive of the Caresses of an Impotent? Now who could teach a Virgin to describe them so exactly? But what is still more wonderful is, that the *Marquis de Gesvres*, after having cheated his Wife, has cheated himself. He certainly imagin'd, that the Caresses mentioned in this and some other Articles, were so many Consummations: For the Impotent make up in Imagination, what they want in Reality, and 'tis thus that Nature makes them amends. This is probably the Reason why he so readily affirms, that he has consummated. As for the rest, the Mysteriousness which he affects in the latter part of his Answer, serves only to shew that the Counsellor has lent him this Wit. But whether this Wit be borrowed or no, *Mademoiselle de Gesvres* destroys all Mysteriousness, by offering, without Mystery, to prove her self a Virgin.

SAYS,

* SAYS, That this Article is true.

XI.

WHETHER he does not know that the Duke de Tresmes, his Father, went the next Day after his Departure, to wait upon Mademoiselle de Mascranny at her Toilette, to inform himself about what had passed between 'em; but finding her little acquainted with such Things, and thereby judging that she was not likely to complain of the Condition of the said Respondent, (his Son) who he knew was unable to consummate the Marriage, he retired without giving her any further Information upon that Head?

† Says, that he has no Knowledge of the Fact constrain'd in that Article, and that he had heard his Father, the Duke of Tresmes say, that it was false.

* The Marquis de Gesvres had not then been long enough a Husband to neglect the complimentary Part of Wedlock. From hence proceeded those Demonstrations of Sorrow, and those frequent Letters mention'd in this Article: But he was at no great Pains for these Letters, for he had with him a Governor, who was at the whole Expence of them, and all the Marquis's Gallantry consisted in following his Advice.

† Tho' this Fact is denied, yet it bears a Character of Probability, which gives us no room to doubt of its being true. And, indeed, where is the Wonder for the Duke de Tresmes to marry his Son, notwithstanding that he knew of his Impotence? If the Impotent flatter themselves, tho' they ought to know themselves better than any body, the Fathers of the Impotent may much more flatter themselves.

XII. IF

XII.

If it be not true that the same Mademoiselle de Mascranny, being informed that the said Respondent would shortly arrive from the Army, went to meet him, according to his Request, and that being at Bourget, where she staid for him, Madam de Revel, her Aunt, (who came with her,) and the other Persons, took all Opportunities of leaving them alone, thinking that in so doing they oblig'd the Respondent; and that when they were alone, there pass'd nothing Particular between 'em, the said Respondent contenting himself with making great Shows of Endearment?

* SAYS, That this Article is true, and that there pass'd nothing Particular between him and the said Mademoiselle de Gesvres, because the Place was not proper.

XIII.

WHETHER it be not true that the same Day, being arriv'd at Paris, the said Respondent lay with her, pass'd the Night in Caresses, and new Demonstrations of Fondness, without going about to consummate the Marriage?

† SAYS, That the Fact is false, and that the said Night he rendred her the Duty of Marriage.

* A Husband of 17 Years old, that has pass'd but few Days with his Wife, and who after Five Months Absence, being alone with her, examines whether the Place is proper, is surely the most improper Husband that ever was.

† What does the Marquis de Gesvres mean by his rendring her the Duty of Marriage? The Word Duty is a loose Term, and signifies what one pleases; perhaps in the Language of the Marquis de Gesvres, it means those
rest-

XIV.

IF it be not true, that during his Stay at *Paris*, which was from *St. Martin* to *May* following, the said Respondent lay four or five Times a Week with the said Mademoiselle de *Mascranny*, without having ever consummated the Marriage, contenting himself with embracing her tenderly, and feeling her?

* SAYS, That it is true that he lay with her all that Time, and that he often rendred her the Duties of Marriage.

XV.

IF it be not true that the said Respondent being arriv'd from his second Campaign at *St. Owen*, where the said Mademoiselle de *Mascranny* waited for him, with the Duke de *Tresmes*, some Days before that of *St. Martin*, he lay the very Night of his Arrival, with the said Mademoiselle de *Mascranny*, and that he spent the Night, as he was us'd to do, in caressing her; but with this Difference, that he took great Care to wrap himself up in his Shirt, and had the Precaution to hold the said Mademoiselle de *Mascranny* by the Hands, because she had writ him Word, when he was at the Army, that she had been at the Marriage of a Lady of her Acquaintance, who had taught her a great many Things, which before she was ignorant of?

restless Bustlings of Impotence, which Policy suggests, and Nature abhors. Perhaps too by this mental Interpretation, he thought to avoid forswearing himself.

* Here are seven whole Months of nocturnal Cohabitation, during which, the Marquis de *Gelvres* could not dispose of his Person any otherwise than the Impotent dispose of themselves. What is to be hoped for from him after this?

* SAYS,

* SAYS, 'Tis true, he lay with her that Night, and render'd her then the Duties of Marriage: but that the rest of the Article is not true.

XVI.

WHETHER it be not true, that during the six Months the said Respondent lay with the said Mademoiselle de Mascranny whilst he staid at Paris, he cou'd not consummate the Marriage, tho' he often went about to do it, always giving over after having hugg'd and embrac'd the said Mademoiselle de Mascranny, and nothing else.

SAYS, That the Contents of this Article are not true.

XVII.

WHETHER it be not true, that when he went about to consummate the Marriage, he felt great Agitations, and that always finding himself unable to perform the Action of Marriage for want of Erection, he gave over without doing any Thing?

* This is an Impotence so compleat, that we may say it is an Original, and that Madam de Gesvres could not fetch the Idea of it either from her self, or from Books, or from the Tradition of Persons subject to make such Experiments. What she says then, must needs be true. And after all, where is the Damon that could invent, that the Marquis de Gesvres was so well persuaded he was dead, that he made himself a Winding-Sheet of his Shirt? What infernal Spirit could furnish the Image of those imprison'd Hands? And 'tis observable, that as Madam de Gesvres had then made some Progress in the Theory, he was obliged to take new Precautions to hinder her from finding out how far the Impotence of her Husband extended, and how incurable it was?

* SAYS,

* SAYS, That this Article is not true, and that the said Mademoiselle de Gesvres must needs remember to have often felt the Effects of Erection.

XVIII.

WHETHER it be not true, that the Duke de Tresmes, well knowing that the said Respondent (his Son) was impotent, had shew'd himself very much concern'd at the Want of Consummation, and had often discoursed with the said Mademoiselle de Mascranny upon that Subject, and had testified his Uneasiness to his Son, who being disturbed at it, had desir'd the said Mademoiselle de Mascranny not to speak any more of it to his Father, to which she replied, that it was not she who spoke of it, but the Duke of Tresmes himself, who daily question'd her upon that Article, and that he shou'd desire him not to speak any more of it, for that she would not?

† SAYS, That he knows nothing of this Article, and that he had only heard his Father say he had talk'd

* It is impossible but that there may remain in the Impotent some Movements of Concupiscence, otherwise they would not be of the Generation of Adam; but as those Movements are frustrated of their Effect, the Concupiscence irritated and not satisfied, turns into Rage and Fury. And from thence proceed those Agitations, which Madam de Gesvres here describes. Once more, where could she have learnt these Actions of Impotence, unless it be in the Portrait that she had of them in M. de Gesvres.

† Let any put themselves in the Place of the Duke de Tresmes, and of Monsieur and Madam de Gesvres, and they will find that an impotent Husband, the Father and Wife of that Husband, are very likely all three to act and

talk'd privately with the said Lady, but never concerning the Impotence she complains of, the said Duke de Tresmes being persuaded of the contrary.

XIX.

WHETHER it be not true, that the said *Sieur de Tresmes* did often, in private, sollicite him the Respondent to do his Endeavours to arrive at Consummation, and did even desire the said *Mademoiselle de Mascranny* to make some Advances on her side, but that he tried in vain to arrive at Consummation, finding himself in a natural Impotence to do it?

SAYS, That the Fact contained in this Article is entirely false.

XX.

WHETHER it be not true, that the Rumour of the Impotence of the said *Sieur de Gesvres* beginning to grow publick, the Duke de Tresmes, fearing lest the said *Mademoiselle de Mascranny* shou'd complain of it to her Relations, and that they shou'd take Measures to null the Marriage, turned away from her Service *Mademoiselle Gaulthier* her Governess, and all the other Domesticks, to the Intent that she might have no body that she cou'd confide in, to complain to of her Condition?

and speak just as it is said in these Articles, they acted and spoke. It is necessary then to have gone thro' such a Trial, to represent those three Characters so naturally. And besides, we see in the Interrogatories of *Madam de Gesvres*, why the Duke de Tresmes, notwithstanding he was convinc'd of the Impotence of his Son, did however admonish him to do his utmost.

† SAYS

† SAYS, That there is nothing true in this Article; but that the said *Sieur de Tresmes* turned away the said *Mademoiselle de Gauthier*, and two *Lacquies*, because he was not satisfied with their Service, and in no respect for the Reasons contained in the Article.

XXI.

WHETHER it be not true, that, for the same Reason, she was sent to *Gesvres*, a Fortnight after the Departure of the said Respondent for the Army, under Pretence that the said Respondent being oblig'd to be at great Expences in the Army, it was necessary for her to retire into the Country, that she, on her part, might be at as little Expence as possible?

‡ SAYS, That 'twas not for the Motive mention'd in the Article, that the said Lady was sent to *Gesvres*, but

† *Mademoiselle Gauthier* being so suddenly turned away, is not indeed a thing of the most decisive Nature, but however it is of a Piece with the rest of the Proofs; for *Mademoiselle Gauthier* could not displease the Duke de *Tresmes*, any otherwise than by being under too great Obligations to the Relations of *Madam de Gesvres*, and because they above all things desired to conceal from those Relations the Condition of *Monsieur de Gesvres*.

‡ In order to shew that the confining her at *Gesvres*, could have no other Motive but that mentioned in the Article, it is necessary to give a superficial Idea, both of the Reasons which oblig'd the Duke de *Tresmes* to get thither the said *Madam de Gesvres*, and of the Inflexibility with which he tried to keep her there. 'Twas in the Month of June, 1711. that she was banish'd into that Solitude (for so the Marquis de *Gesvres* did himself call it before a full Audience.) Now it must be observed,

but for other good Reasons, which it would be useless to recount here, and that the avoiding of Expence was one of them.

XXII. W H E

that Gesvres is situated in a Marshy Country; 'tis a Place unwholesome in Summer, cloudy in Winter, and almost always infected with popular Diseases, which raged there at the Time when Madam de Gesvres was carried thither: And she was there attacked with the Purple, the Small-Pox, and the Meazles, without reckoning the Fever, and an infinite Number of more alarming Symptoms, such as Vapours, Swoonings, Faintings; she might even say, that in the ten Months she staid there, she was not a quarter of an Hour without a Fever or some other Illness; therefore she was almost dying when she returned from thence. We may represent to our selves the Condition she was in, in the midst of a Desert, without Assistance, without Comfort, without Remedies, without any Ease, and, which is more, without the Sustenance proper for a sick Person; it being out of her Power to have with her a Physician of Paris, except at last, when the Duke de Tresmes sent one, presently after he had heard that Madam de Caumartin had dispatched one to her. We may well imagine, that in the disconsolate Condition Madam de Gesvres was in, she was incessantly imploring the Mercy of the Duke de Tresmes, in order to obtain the Favour of returning to Paris, without which she despaired of her Life. But the Duke de Tresmes was inexorable. Now let him say, it was out of a Spirit of Parsimony, that he endanger'd the Life of a Daughter-in-Law, who brought such a great Estate into his Family. Certainly there can be nothing of Oeconomy in this Conduct, and every one may see why. But, says the Marquis de Gesvres, He had other good Reasons, which it would be useless to recount. Here again speaks the adventitious Spirit; behold

XXII.

WHETHER it be not true, that the real Motive of that Journey was the Apprehension of her taking Measures with her Relations, who were then informed of the Impotence of the said Respondent, and that the said *Sieur de Tresmes* sent her word by one of her Kindred, that if she would say she was contented with *Monfieur de Gelves*, and that he was really her Husband, she should not go to *Gelves*?

SAYS, That as to the Motive of sending the said Lady to *Gelves*, he has explain'd himself in the preceding Article; and that as for the latter part, he has heard his Father, the said *Sieur de Tresmes*, say, that the Fact was false.

XXIII.

WHETHER he does not know that she was solicited by the Duke de *Tresmes*, or him the Respondent, to write Letters during her Stay at *Gelves*, by which she should acknowledge that she was contented with the Marquis de *Gelves*, and that he had used her as a Wife, and that they promised, if she would do that, to let her return to *Paris*?

behold the Oracle which expresses it self in *Ænigma's* and *Mysteries*: But if the Marquis de *Gelves*, at the Time of his Interrogation, might ask the mysterious Part, at the Expence of *Madam de Gelves*, he cannot do so now, since *Madam de Gelves* demands to prove that she is a Virgin. This Proof, which she not only offers, but even demands, is of more Weight than those good Reasons, which he will not recount. Since then, neither *Oeconomy*, nor those good Reasons, could make her be imprison'd at *Gelves*; it follows, that that Captivity must be the Effect of some secret Policy; and what is that Policy? unless it be that express'd in the Article.

SAYS, That he himself knows nothing of the Fact, as to that part of it which regards his Father the said Duke de Tresmes, whom he has lately heard say it was false; and as to that Part of it which regards him the said Respondent, he avers the Fact entirely false.

XXIV.

WHETHER it be not true, that the said Respondent being returned from his Campaign, to Paris about the Eighteenth or Twentieth Day of October 1711. went to Gesvres to see the said Mademoiselle de Mascranny on the Eve of All-Saints Day, with the Abbot de Bois-Franc his Uncle, whither the Abbot de Mascranny, Uncle to the said Mademoiselle de Mascranny, came some Days afterwards; that he lay the Night of his Arrival with the said Mademoiselle de Mascranny without consummating the Marriage, contenting himself according to his Custom with caressing and feeling her without attempting Consummation, finding himself unable either for want of Erection, or for some other Cause, which she knows nothing of?

* SAYS, 'Tis true, that at the Time mentioned in the Article he came to Gesvres, and lay with the said Lady.

* It must here be observed, that by the Marquis de Gesvres's own Confession, he stay'd but ten or twelve Days at Gesvres with his Wife; by Consequence then, he return'd to Paris, and this deserves Reflection: For the Duke de Tresmes, in his Justification, has printed and handed about a Letter, written to the Marquis de Gesvres by the Abbot de Mascranny, Uncle to Madam de Gesvres; and as, amongst other Lessons of Frugality, which the Abbot de Mascranny in that Letter gives to the

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the Lady de MASCRAUNNY. 101

ady; but that for the ten, or twelve Days that he lay'd there, he render'd her the Duties of Marriage.

XXV.

WHETHER it be not true, that the next Morning as he was going out of his Chamber, Madam de Gesvres having asked him, If he had done his Wife well over, after having been so long absent from her? He replied, Ask my Valet de Chambre, and he will tell you: And that the Valet de Chambre immediately said in the Presence of him the Respondent, that the Marquis de Gesvres had told him as a Secret, that he had roger'd the said Mademoiselle de Mascraunny seven times that Night, tho' he did not so much as go about to consummate the Marriage, being unable to do it, but only fondled and grop'd her as usual?

† SAYS, That the whole Fact contained in this Article is forg'd.

Marquis de Gesvres, he advises him to carry his Family for some time to Gesvres, in order to avoid the Expence of keeping it at Paris; the Duke de Tresmes infers from this, that 'tis by the Uncle's Advice, that the Niece was confin'd to Gesvres. As if it was in Obedience to the Advice of the Uncle, that they almost suffer'd the Niece to perish for want of Necessaries, in the midst of a desolate Country, whilst the Husband spent his time at Balls, Plays, and Masquerades at Paris, spending more in a Day for his Pleasures, than the Niece did in a Month for Necessaries. If 'tis the Letter of the Abbot de Mascraunny, that put the Duke de Tresmes and the Marquis de Gesvres upon this Conduet, it must be confessed that Madam de Gesvres reap'd strange Fruits from the Economy-Systems of her Uncle.

† This Fact is so natural and suitable to a young Lord, when a perplexing Question is put to him, that 'tis impossible for Madam de Gesvres to have invented it.

XXVI

WHETHER it be not true, that he the Respondent did cause a Report to be spread, that the said Mademoiselle de Mascranny was with Child, and that he must look out for a Nurse; and this to put a Stop to the Raileries which the World made on his Impotence?

* SAYS, That 'twas she the said Mademoiselle de Gesures her self, that told him the Respondent she thought her self pregnant; that she also told it to Madam de Revel, and to several of the Domesticks.

XXVII

WHETHER it be not true, that he staid five or six Days at Gesures, at the time of that first Journey; and that he lay every Night with the said Mademoiselle de Ma'cranny, without being ever able to consummate the Marriage; and that for fear she should perceive his Impotence, he took great Care to wrap himself up with two or three Pair of Trowzers and Breeches on at a time, when he was up; and when he was with her in Bed, he did the same with his Shirt, always taking the said Mademoiselle de Ma'cranny fast hold by the Hands?

† SAYS, That he has answer'd this by the 24th Article, and that as for the latter Part of it, the Respondent never wrapped himself up with Trowzers, or with his Shirt; and that it is a fictitious Story.

* Amongst all the Impotents, (whose Marriage has been dissolv'd) and who have articulated and averr'd the Consummation of Marriage, there are few but what have also articulated some pretended Lyings-in, or some Appearance of Pregnancy.

† The same Reflections may be made upon this, as upon the 15th and 16th Articles.

XXVIII. W H E

XXVIII.

WHETHER it be not true, that returning to *Gefures* to see the said *Mademoiselle de Mascranny*, he spent four Days with her in the last *Christmas* Holy-Days, and lay with her without consummating the Marriage, having passed the Night with her as usual.

* SAYS, That 'tis true, that he went to *Gefures* at the Time mentioned in the Article, and lay with the said Lady, but that he render'd her the Duties of Marriage.

XXIX.

WHETHER it be not true, that the said *Mademoiselle de Mascranny* represented to him, that her Relations (who were angry at her being detained at *Gefures* in a very unwholesome Air, in Danger of her Life, where she has since had two dangerous Fits of Sickness) had commanded her to give them an Account how she lived with *Monsieur de Gefures*, and to inform them whether it was true that he was impotent, and had not consummated the Marriage, as the Report went; and that upon this, the said *Mademoiselle de Mascranny* being in Bed with him, asked him what Answer he would have her return to her Relations; to which he replied, 'Tis very perplexing, and only said, Yes and No, several times over.

† SAYS, 'Tis true, that the said Lady was sick at *Gefures*, but that the rest is false and invented.

* The *Marquis de Gefvres* pays his Wife, then Prisoner at *Gefvres*, a second Visit of four Days: We may make the same Reflections as on Art. 24.

† A married Impotent is always divided between two contrary Desires. He would fain be rid of a Wife that is a Burthen to him, but he does not care to own himself Impotent; and from hence proceeds the Irresolution of the *Marquis de Gefvres*, so well describ'd in this Article.

XXX.

WHETHER he did not perceive, that the said Mademoiselle de Mascarany, towards the End of the three Years of their Marriage, sometimes avoided lying with him under divers Pretences? And whether he does not know that the true Motive was, that 'twas by Order of her Father Confessor, who had forbid her to lie with him, having given her to understand that her Salvation was in Danger, because she cou'd not live with him the Respondent with a safe Conscience; and that 'twas for the same Reason, she resolved, against her Inclination, to demand to have her Marriage annull'd?

* SAYS, 'Tis true, that the said Mademoiselle de Mascarany did sometimes avoid lying with him the Respondent within the Time mention'd in the Article; but that he looked upon that Conduct only as Spleen and ill Humour, and that he was far from thinking it proceeded from the Motive mentioned in the Article, because he had several times consummated the Marriage.

* The Duke de Tresmes, in the printed Letter of the Abbot de Mascarany, has joined to it a Marginal Note, in which he insinuates, that the Marquis de Gelvres separated himself from the Company of his Wife, only because he was not well received by her, when he gave her a Visit at Gelvres: That Note has some Relation with this Article, for we here see the Reason why Madam de Gelvres did not give Monsieur de Gelvres a gracious Reception. The Approach of a sham Husband cannot make the same Impression upon the Mind of a Wife, as the Presence of a real Husband does; and tho' a Wife could put such a Constraint upon her self, as to appear what she was not; yet even Religion would hinder her from so doing, because it is not lawful to invite an Impotent to a Co-habitation, equally abhorred by God and Nature.

XXXI. WHE-

XXXI.

W H E T H E R he does not own his Marriage to be justly annul'd because of his Impotency?

* S A Y S, No; and that the said Lady well knows that nothing can be so false as the Impotency by her alludg'd against him.

XXXII.

W H E T H E R he will abide by the Searchers and the Witnesses, who know of his Impotency, and of the Facts before-mention'd?

* S A Y S, That he will willingly abide by the Searchers; but that as for the Witnesses, he looks upon the Demand as impertinent.

B E I N G interrogated upon the first Article of the two Facts, signified to him Yesterday, by way of Addition; he said, that, forasmuch as the said Facts were not exhibited to him till Eight a Clock Yesterday Evening, he could not examine them, and is not prepared to answer them; he therefore desired that another Appointment might be made for next Tuesday; so that at his Request, we have made an Appointment for next Tuesday at Eight in the Morning.

T H E present Interrogatories and Answers being read, he says his Answers contain nothing but the Truth, perseveres in them, and has signed.

* The Marquis de Gelyres looks upon as impertinent, the Proposal, that Madam de Gelyres makes to abide by the Witnesses. And yet he proposes in his Facts to abide by those who, he says, have seen him in a State of perfect Ability, &c. He should remember the Censure he here pronounced against Testimonial Proofs.

.LXXX

INTERROGATORY *exhibited* by us ANTHONY DORSANNE, &c.

Tuesday 26th of April, 1712.

Eight in the Morning.

FIRST concerning his Name, Surname, Age, Quality, and Habitation, after having taken an Oath to say nothing but the Truth.

SAYS, His Name is *Jochim Bernard Potier, Chevalier, Marquis de Gesvres, &c.*

ARTICLE I.

WHETHER he had not formerly a Rupture, with which he was very much incommoded, and was in the Hands of a Surgeon of *Paris*, and afterwards in those of a Woman, who applied Plaisters to his natural Parts, in order to cure him of that Rupture?

* SAYS, That he had once a Rupture, of which he was cured, and that at present he suffers no Inconveniency upon that Account; that having had the

* The Impotency of the Marquis de Gesvres is of so extraordinary a Kind, that 'tis hard to conceive how Nature in forming him, could so entirely forget that she was forming a Man. For this Reason the History of his Life was searched into, to find out the Cause of so surprizing an Effect, and we thought we had met with it when we discover'd the Rupture and Plaisters; and perhaps we are not deceiv'd; but whether we are or no, the Cause is indifferent, so the Effect be certain.

said

said Rupture at the Age of two Years, he should not have the least Remembrance of it, if the Persons who bred him up had not told him of it; that he was so perfectly cured of it, that he performed all his Exercises in the Academies, without feeling any Remains of it, and that he, the Respondent, has been told that he never had any Plaisters applied to his natural Parts.

II.

WHETHER since he was in the Hands of that Woman, he has felt no Ail in his Natural Parts, that might hinder their Functions, or at least, whether he has no Remains of it?

SAYS, That he never felt any Ail, as he answered to the preceeding Article.

III.

WHETHER it be not true, that the Plaisters of the Woman who had him in hand, being in all likelihood compos'd of astringent Medicines, to retain the Parts which caus'd the Opening in the Rupture, did not affect the Testicles, and shrink up the Nerves which served for Erection of the Penis — So that he was no longer capable of Erection?

SAYS, That the Fact is false.

IV.

WHETHER he knows of no other Defects in his Person to make him unable to consummate the Marriage, and to hinder Erection and Ejaculation?

SAYS That he knows of no Impotency in himself, and that he has consummated the Marriage, as he said in his preceding Interrogatory.

V.

WHETHER it was not that want of Erection, which hindred his consummating the Marriage, tho' he often went about to do it?

SAYS,

SAYS, That he has answer'd this Article by his preceding Interrogatory.

VI.

WHETHER he will not consent to have the said Mademoiselle de Mascranny visited, in order to justify what he advances, and to put a Stop to the Report of her being still a Virgin?

* SAYS, That the Proposal is so contrary to Decency and Modesty, that he need make no Answer to it.

VII. WHE-

* All the Facts laid down by Madam de Gesvres, center in this, that the Marquis de Gesvres has not consummated the Marriage. And this is very natural, because it is impossible for a Wife that was a Virgin, when she was married, to be able to judge of the Capacity or Incapacity of her Husband, any other wise than by his Operations. On the contrary, all the Marquis de Gesvres's Answers terminate in this Supposition of the Fact, that he has several Times consummated. Now two Reflections may be made upon this. First, So soon as ever the Dispute between the Husband and the Wife, was reduced to the sole Point of Consummation or Non-Consummation, the Wife could not confound the Husband better than by saying, I am a Virgin, and am ready to prove it. And the Husband, on his Side, could not make a plainer Acknowledgement of his Impotency, than by testifying such an Abomination of that Proof, as he does in his Answer. This is downright Speaking. Secondly, So soon as 'tis granted that all the Facts and Answers unite in the Point of Consummation, or Non-Consummation, it is evident the Searchers, who visited the Marquis de Gesvres, ought thereby to judge of his Capacity or Incapacity. For as the Sentence that constituted them Searchers, wills that they should form their Decisions upon those Facts and Answers, it also wills that they

VII.

WHETHER it be not true, that his Reasons to hinder the said Mademoiselle de Mascranny from being visited, are only specious Pretences which he uses to conceal the Truth of the Marriage not being consummated?

SAYS, No; he having consummated the said Marriage.

VIII.

WHETHER it be not true, that since his Marriage, the Sieur de la Carliere, Physician, and the Sieur Dupré, Surgeon, came for a good while to see him daily Morning and Night, and that every Time they came, and were in the Chamber of the said Marquis de Gesvres, the Duke de Tresmes caused to be

they should decide concerning Consummation or Non-Consummation. Since that is the only Fact in Dispute, and affirmed on one Side, and denied on the other. If this be so, those Searchers might make themselves Judges of the Consummation, by arguing from the Act or Non-Act, to the Sufficiency or Insufficiency. And when they have done this, far from exceeding the Terms of the Sentence, as some would have it believ'd, they have exactly followed the Lesson that the Sentence prescribed them. In a Word, the Sentence directed them to judge of the Sufficiency by the Facta, and all the Facta center in Consummation, as all the Lines drawn from a Circumference meet in the Center, and consequently the Searchers had nothing but that Fact to examine into, and by a still more necessary Consequence, upon that very Fact they might give their Opinion; otherwise these Words of the Sentence, to judge of the said Impotency by the Facta exhibited to the Defendant, and upon which he has been interrogated, would be wholly useless.

taken.

taken away, nay, did even himself take away the Key of the said Chamber, which had a Communication with the Apartment of the said Mademoiselle de Mascranny, tho' the said Marquis de Gesvres tho' seem'd outwardly in a good State of Health?

SAYS, That this Article is entirely false.

THE present Interrogatory and Answers being read, he says, they contain nothing but Truth, perseveres in them, and has sign'd, &c.

INTERROGATORY of Mademoiselle de Mascranny, concerning the *Facts* and Articles to her exhibited, at the Request of the Marquis de Gesvres.

TEXT.

INTERROGATORIES concerning *Facts* and Articles exhibited by us ANTHONY DOR-SANNE, Priest, Doctor of Theology in the Faculty of Paris, Canon and Archdeacon of Sois in the Church of Paris, Official of Paris, by Virtue of our Order of the Tenth Instant, at the Request of Messire FRANCIS JOACHIM BERNARD POTIER, Marquis de GESVRES, Defendant, assisted as much as is necessary by his Father, the Duke de TRESMES.

Tuesday, 20th of Sept. 1712.

ARTICLE I.

Concerning her Name, Surname, Age, Quality, and Habitation, after having taken an Oath to deliver nothing but Truth.

SAYS,

the Lady de MASCRAUNNY. III

SAYS, Her Name is Mary Magdalen Emilia de Mascraunny, Daughter of Messire Bartholomew Mascraunny, Master of Requests of the Hostel du Roy, aged 20 Years and a Half, living at the Religieuses of Calvary, in the Street of Vaugerrard.

II.

WHETHER it be not true, that 'twas at the Persuasion of Persons of ill Dispositions, and who are Enemies to the Family of the said Marquis de Gesvres, that she engag'd in the Accusation of Impotency, which she has enter'd against him?

** SAYS, That she did not do it at the Persuasion of any Body, but only for the Satisfaction of her Con-*

** The Marquis de Gesvres ought to have let us know from whence that Enmity could proceed. But though he were subtle enough to invent some Reason for it, is it not plain, that without Irreligion and Madness, it is impossible to make use of a false Accusation of Impotency, to satisfy a Movement of Enmity? If it be so, will he pretend to make the World believe, that the Family of Madam de Gesvres is capable of an Excess, which can belong to none but the Impious or the Frantic?*

What is said here, that the Confessors of Madam de Gesvres, refused her Absolution, ever since she was married, because of the State in which she lived with Monsieur de Gesvres, is not contradictory to what she says in another Place of her Ignorance; for that Ignorance did not hinder the Confessor from refusing her Absolution. The Reason is this; a Confessor that directs a young Lady, newly married, seldom fails to dip into the Secrets of the Marriage-Bed. He could not forget that of Madam de Gesvres; and 'twas by her Ignorance, and several innocent simple Expressions, that the Confessor discover'd the Impotency of Monsieur de Gesvres. But being prudent,

Conscience, and by the Orders of her Father Confessors, who have refus'd her Absolution ever since she was married, because of the State in which she liv'd with Monsieur de Gesvres.

III.

WHETHER it be not true, that at the Time of her Marriage with the said Marquis de Gesvres, she was aged 17 Years?

SAYS, Yes.

IV.

WHETHER it be not true, that the third and fourth Night after their Marriage, they lay together, and that the Marriage was consummated those two Nights?

SAYS, 'Tis true, that the third and fourth Night after their Marriage, the said Marquis de Gesvres lay with her the Respondent; but that it is false that he either then, or even since, consummated the Marriage.

V.

WHETHER it be not true, that, though young, she was not ignorant what Consummation of Marriage was? And why, in several Facts and Articles upon

dent, he thought he should not presently give her any Intling of the Condition she was in; yet he did not think that Condition pure enough to be admitted to the Sacrament. This is the Reason why he refus'd her Absolution ever after she was married; which very much amazed Madam de Gesvres, who could not imagine the Cause of that Refusal: But when she arriv'd at a perfect Theory of the Thing, and the Mystery between the Confessor and her was cleared up, then the Confessor talk'd with her in plain Terms.

which

the Lady de MASCRANNY. 113

which she caused the said Marquis de Gesvres to be interrogated, she affects to put on Airs of an Ignorance so little probable?

* SAYS, It is certain that at that time she did not know what Consummation of Marriage was.

VI.

WHETHER it be not true that the Tenderness she shewed for the said Marquis, on the *Wednesday* following, at his Departure for the Army, and which he testified by her Letters, during the whole Campaign, were the Consequence and Effect of the Satisfaction she had receiv'd from their conjugal Union?

SAYS, 'Tis true, she at that Time testify'd by her Letters a great deal of Tenderness for the said Marquis de Gesvres; but that it was not the Effect of the Satisfaction she had receiv'd from their conjugal Union, but only because she thought it was enough, that he was her Husband, that they had been before the Priest, and receiv'd the Benediction of the Church.

VII.

† WHETHER it be not true, that at his Return from the Army, about the Beginning of *November*, he lay with her the very Night of his Arrival, continued to do so for two Months and a Half, and often perform'd the Duties of Marriage?

* It is no wonder for Mademoiselle de Mascranny to be ignorant in her Youth, of Mysteries, which were so carefully hid from her. Thus she may safely affirm, that she was a perfect Novice.

† Here the Marquis de Gesvres boasts not only of Consummation, but also of frequent Consummations; how comes it then, that he is so very much averse to have Madam de Gesvres search'd?

SAYS,

SAYS, 'Tis true, that the said Marquis de Gesvres at his Return from the Army about the Beginning of November, lay with her the Respondent the very Night of his Arrival, and continued to do so all the Time set down in the Article and more, but that it is absolutely false to say that he perform'd the Duties of Marriage, whatever Efforts he might make to do it.

VNI.

* WHETHER it be not true, that at that Time she thought her self with Child, said so to several of the Family, and that it was so firmly believ'd, that happening to fall down on her Knees in the Gillet Closet at the *Hôtel de Gesvres* in Paris, the whole House was alarm'd at it; and that on St. Geneviève's Day, they sent for the Sieur Enguehard the Physician, upon that Occasion?

SAYS, That she never thought her self with Child, never told any Body that she was so, and that she don't remember that she fell down upon her Knees in the Place named in the Article; that if the Sieur Enguehard was sent for at that time, it must be for some other Indisposition.

* Are there many Ladies of Madam de Gesvres's Quality, who, with Manners so unblamable as hers are, accuse their Husbands of Impotency, after having thought themselves with Child? Are there many, who, after such a Thought, desire to give Proof of their Virginity? But is not this Fall upon the Knees an admirable Invention? We know that Women with Child generally fall so. The Marquis de Gesvres therefore wou'd by that persuade us, that Madam de Gesvres was really with Child. Now if it be so, what is become of the Foetus, since it is owned that it did not go from her by Miscarriage?

* IX. WH

IX.

* WHETHER she will refer to the Persons who heard her talk in that manner?

SAYS, That she will refer to nothing but the truth, and that the Proposal is idle.

X.

WHETHER it be not true, that at the End of the two Months and a half, the said Marquis de Gesvres having for some time forbore to lie with her, she took it very ill?

SAYS, That her Conscience was too much violated, when she lay with the said Marquis de Gesvres, for her to take it ill when he did not come to lie with her.

XI.

† WHETHER it be not true, that at his Return from the Army about St. Martin's Day, he lay with her at St. Owen, that as he was getting into Bed he smelt an ill Smell in the Bed, that the said Lady told him it was some Tenobes which were put to her Sides, and that notwithstanding the Disagreeableness of the Smell, he had the Civility to stay with her, and to perform the Act of Marriage?

SAYS, It is true, that he lay that Night with her, the Respondent, at St. Owen, but it is very false, that he at that time perform'd the Act of Marriage.

* A fine Proposal indeed! She need only accept of it, and two beggarly Witnesses shall give Monsieur de Gesvres that Sufficiency, which the Faculties of Physick and Surgery could not do in the Six Months that they used their Endeavours to make him that Present, but in vain.

† Strange! The Tench restores what the Eel took away.

XII. || WHE-

XII.

|| WHETHER she can so far flatter her self, as to think any Body will believe her when she says, that, during all that Time, she had been ignorant of the Condition of Husband and Wife; and that in order to be acquainted with it, she had any need to go to the Wedding of a Lady of her Acquaintance, who taught her a great many things which before she knew nothing of?

SAYS, That she thinks she may flatter her self so far, since 'tis true.

XIII.

|| WHETHER, during the Winter of the Year 1711. tho' for the most part of it, the said Lady did not give the said Marquis de Gesvres good Usage, he did not lie with her often, and perform the Duties of Marriage, till the End of April, when he let out for

|| The Marquis de Gesvres does not ask if this Fact be true, but if his Adversary expects to be believed when she advances it; that is, he interrogates the Conscience of Madam de Gesvres, and would have her give him an Account of her inward Thoughts. Now this was never heard of, before in Matter of Facts and Articles, where in the Question is not to know what the Adversary thinks, but what has, or what has not happened. Madam de Gesvres therefore might have made use of the Language of the Law, and answered that the Question was impertinent, and not to be admitted. However, does she make use of it? Far from that, she replies without hesitating, that she may flatter her self so far, since the Fact was true. This plainly shews the Truth to be of her Side, for otherwise she might easily have declined the Perjury, by rejecting this Fact as useless, because of the Manner in which it was laid down.

his third Campaign, and the said Lady for *Gesvres*?

SAYS, That it is not true, that she gave the said Marquis de *Gesvres* ill Usage; nor, that he perform'd the Duties of Marriage, during all the Time mention'd in the Article, whatever Endeavours he us'd, and tho' he often lay with her the Respondent.

XIV.

† WHY and by whose Counsel, not satisfied with falsely accusing her Husband of Impotency, she dares to injure the Duke de *Tresmes*, by saying in her Writings, and in her Facts and Articles, That he knew of the suppos'd Impotency of his Son, and whether such a Fact, which has no Probability in it, is not invented out of pure Malice?

SAYS, She said that the Duke de *Tresmes* knew of his Sons Impotency, only from what he himself said to her the Respondent upon that Subject.

XV.

* DOES not this abusive Falsity contradict it self in the Facts and Articles, where we see that after having basely suppos'd in the Eleventh and Eighteenth of the said Facts, that the Duke de *Tresmes* knew his Son to be Impotent, she also falsely supposes in the Nineteenth, that the Duke de *Tresmes* often solicited his Son in private to do his Endeavours to arrive at Consummation?

† *Madam de Gesvres's Answer to this Article has some Relation with the Eleventh Article of the Marquis de Gesvres's Interrogatory, and one serves to confirm the other; for the Truth, which is but one, never contradicts it self.*

* The Answer of *Madam de Gesvres* to this Article, has so much the greater Appearance of Truth, as in the House of an Impotent, all is Fiction, Policy, and Ostentation.

SAYS

SAYS, That it is easy to reconcile the Contents of the said Article, and that the Duke de Tresmes, knowing of his Son's Impotency, solicited him to do his Endeavours to arrive at the Consummation of his Marriage, in order to persuade her the Respondent, that that Impotency might go off.

XVI.

WHEN she advances, Articles XX, XXI, and XXII, that she was sent to Gesvres upon account of the Report that begun to be spread abroad of the supposed Impotency of the said Marquis de Gesvres, and for fear she shou'd complain of it to her Family, and they shou'd take Measures to annul the Marriage, is not this also a forged Supposition?

* SAYS, That the Motives she set forth in the said Articles, of her Journey to Gesvres, are very true.

XVII.

† Is not the Letter written by the Abbot de Mascran, Uncle and Guardian to the said Lady, a formal Proof of the Falsity of these Facts?

SAYS,

* We have shew'd in our Remarks on the XXI, XXII, and XXIII'd Articles of the Interrogatory of the Marquis de Gesvres, what were the true Motives of the Banishment or Imprisonment of Madam de Gesvres.

† According to the System of the Abbot de Mascran, the Marquis de Gesvres must have retired to Gesvres, as well as his Wife. Did he so? 'Twas not then, in order to practise that System, that Madam de Gesvres was confin'd to the Solitude of Gesvres.

But the Truth of it is this; the Duke de Tresmes foreseeing that the Severity he used towards Madam de Gesvres would provoke her Relations and the Publick, thought

the Lady de MASCRANNY. 119

SAYS, That the said Abbot de Mascranny, being charmed by the Discourse of the said Duke de Tresmes, might write whatever he would have him:

XVIII.

WHEN she supposes in the 22d Article, that the Duke de Tresmes sent her Word by one of her Friends, that if she would say she was contented with the Marquis de Gesvres, and that he was really her Husband, she should not go to Gesvres; is not this also a Supposition?

SAYS, That what she said in her Twenty second Article is no Supposition, but that it is true.

XIX.

* WHY does she not name that Person, as likewise the other whom she speaks of in the 23d Article, to have solicited her to write the same Acknowledgment in a Letter to the Duke de Tresmes, promising that if she would do so, she should return to Paris?

thought he had best be before-hand with them, and insinuated such Impressions into the Abbot de Mascranny, as he believ'd would induce him to write the Letter, thinking he might afterwards find his Apology in that Letter.

* The Duke de Tresmes, and the Marquis de Gesvres, entrusted Mademoiselle de Gesvres with State Secrets, and to that Purpose, they make use of the Persons mention'd in the 22d and 23d Articles of the Interrogatory of the Marquis de Gesvres. Now even State Secrets are under a Promise of a Secrecy, and it would be violating that Promise to name the Persons. Besides, People of any Distinction do not care to have their Names appear in an Affair of this Nature; 'tis therefore out of respect to them, that Madam de Gesvres declines naming them; and in this she has so much the more Reason for what she does, as the discovering of their Names would not decide concerning the Sufficiency or Insufficiency of the Marquis de Gesvres.

SAYS,

SAYS, That the Duke de Tresmes has so well described the two Persons mention'd in the Article, that it is unnecessary for her the Respondent to name them.

XX.

* IF it be not true, that the said Marquis being arrived at Gesvres on All-Saints-Day, stay'd there two or twelve Days, and that they lay together all the time like Man and Wife?

SAYS, 'Tis true, that the said Marquis de Gesvres lay with her the Respondent all the time set down in the Article; but 'tis false that he either then, or any time since, consummated the Marriage, whatever Attempts he might make to do it.

XXI.

WHETHER she will appeal to the Persons, who have seen the Marquis de Gesvres in a State of perfect Erection?

* The Marquis de Gesvres always affects to equivocate in the Position of his Facts. For, what is the Meaning of these Words, They lay together like Man and Wife? If we take them literally, they mean the Marquis de Gesvres, in Quality of Husband, lay in the same Bed with Madam de Gesvres, and in that Sense the Fact is true. But at the same time, the Words are susceptible of another more secret Explication; which is, that Monsieur and Madam de Gesvres acted like Man and Wife, and in this last Sense the Fact is false. The Cunning then consists in turning the Fact in such a manner, that it may seem not to be denied without Perjury, nor confessed without subscribing to the Sufficiency. Do People make use of such Artifices, when the Truth is on their Side?

* SAYS

* SAYS, That the Proposal is impertinent, and that she will appeal to none but the Searchers.

XXII.

† WHETHER she will believe the Servants and Landresses, who saw upon the Cloaths, and in the Shirts of the said Marquis de Gesvres, the Tokens of the Consummation of their Marriage?

SAYS, No; and that the Proposal is as ridiculous as the preceding; since he never did consummate the Marriage, and for Proof of what she says, she demands to have the Person of her, the Respondent, visited.

* 'Tis wonderful that the Marquis de Gesvres, who can do nothing before Searchers juridically appointed, can do what he will before Searchers of his own chusing.

† A very fine Method truly for the Impotent! at that rate they may make use of another's Virility, not unlike him, who set up for a Poet with the Verses he purchased.

Carmina Paulus emit; recitat sua Carmina Paulus :
Namque potest, quod emit, discere quisque suum.

Paul Verses buys; Paul is a Poet grown,
For what he buys, a Man may call his own.

New Facts and Articles.

ARTICLE I.

WHETHER it be not true, that he again came to Gesvres on Christmas-Eve; that the said Lady would needs that Day go to Midnight Mass; that the next Day she said she was ill; that under that Pretence the Marquis de Gesvres was obliged to lie by himself in his own Apartment; and in

particular, that the Illness was pretended ; that, length, on the third or fourth Night the said Marquis lay with her, and that after the Action of Marriage was consummated, she said to the Marquis, it were by way of Reflection, If I shou'd prove with Child now, how it wou'd spoil my Projects!

* SAYS, It is true, that the said Marquis de Gesvres came to Gesvres at the Time set down in the Article

* 'Tis easy to see that this Fact is invented, but 'tis not quite so easy to see what made Monsieur de Gesvres rack his Brains to invent it.

In the Pleadings, he was reproach'd for the studied Dryness of the Answer ; he was even told, that he talk'd of his Performances like a Parrot ; I have consummated, I have consummated, and nothing else. This Observation, as plain as it was, did however strike those who have Experience in a Conjugal Life, and who know that the Practick of Marriage is seasoned with a great many Adventures, which signalize certain Operations and which serve instead of a local Memorandum to all Husbands. As therefore the Marquis de Gesvres had none of those local Memorandums to quote, he well perceiv'd that that would render his pretended Consummations very doubtful. What did he do then, to remove his Doubt ? He has so harassed, so racked his Imagination that at length it has brought forth the miserable Tale here relates, flattering himself, that when he has tacked this Story to one of his Nocturnal Exploits, he will be no longer said to talk of them like a Parrot. This is the true Source of that Fable : The Proof of what I say, is twofold. For besides that the very Nature of the Fable discovers from whence it proceeds, and shews that it is the Fruit of a Piece of Violence done to the Imagination, Monsieur de Gesvres may be likewise asked, how he came

and that he lay with her the Respondent a few Days after his Arrival; but not having consummated the Act of Marriage that Night any more than before, he said no such thing, That if she shou'd be with Child, it would spoil her Projects.

LAST ARTICLE.

WHAT were the Projects she was afraid to have spoil'd?

SAYS, She has answered this Article by the preceding.

THE present Interrogatory and Answers being read, she persists in her Answers, and has signed, &c.

M. BEGON, Counsellor.
BERNARD, Attorney.

to forget that incredible Intemperance of Tongue, which he attributes to Madam de Gelsvres, when he answered the Twenty eighth Fact, which Madam de Gelsvres caused to be exhibited to him. That Article is concerning what passed at Gelsvres between her and him in the Christmas Holidays. Here was an Opportunity to reverse this pretended Adventure. How came he then to forget it? Was not the Fact of Weight enough to make an Impression upon his Memory? That was not the Reason; but he had not then been told, how much the History of the Nuptial Bed loses of Probability when it is so bald: Let us say then, *Id expeditur psittaco suum xxi.* And let us from thence conclude, that since the Marquis de Gelsvres is obliged to rummage his Ideas, (and Ideas so little natural) for wherewithal to give an Appearance of Probability to his Consummations, 'tis a Proof that those Consummations have no more of Truth in them, than his Ideas have of Probability.

MEMORIAL concerning *Triennial Cohabitation, relating to the Question of Impotency, depending between the Marquis de GESVRES, and his Lady.*

WITHOUT tracing back the Civil Law from whence the Triennial Cohabitation seems to have been borrowed, it is certain that the Constitution *Laudabilem* is a very different Case from that before us. Pope *Celestin III.* is there speaking of such as own themselves not absolutely and incurably Frigid and Impotent, (for indeed to put such to Trial of three Years, were a Prophanation and Piece of Sacrilege,) but to confess that their Completion is feeble, slow, and hard to be stirr'd, who impute their Impotence to some transitory Accident; and who say in a word, *If I have not consummated, I will consummate, give me but time.*

THE Pope judges in these Circumstances, that the utmost time fit to be granted 'em, is three Years. But it does not follow from thence, that the Probation ought always to last three Years. For besides that the Triennial Probation does not take place where Frigidity cannot without that long Essay be manifested, *si frigiditas prius probari non possit*; I find besides this particular Case, nominally excepted by Chapter *Laudabilem*, it is certain that in those Parts of the World where the *Triennium* is practis'd, as Rome, the Judge may, according to Circumstances shorten the Delay of three Years, and content himself with a Proof of less Duration. And this is the Difference which all the Canonists and Practitioners of the Ecclesiastical Court make between Frigidity and

orcery; In frigido, say they, non semper expectatur triennium, in maleficiato semper*: In a Case of Frigidity, three Years Tryal is not always allow'd, but always in a Case of Witchcraft.

WHY does not Frigidity always require an Essay of three Years? Because common Sense tells us, because Experience teaches us, that a Man, who without being sick, without being consumptive, cannot in a Month or two exercise Conjugal Venerie, is a Man who is utterly unlikely ever to do it. It is impossible but Nature must sleep a Sleep of Death, when the Presence of an Object, reiterated daily for some Months together, was not able to awake her. All Men, whether able or unable, can attest this Truth, the one by what they feel, the others by what they do not feel. The Canons too concur in it, as appears from those Words of Chapter *Accepisti de Frigiditate enim & in parvo tempore sciri potuit si cum ea coire potuisses*: For it may easily, and in a little time be

* In frigido non semper expectatur triennium, sed in maleficiato semper: magis enim sperandum est, quod esset impedimentum accidentale, quam illud quod est à naturâ. *Hostiensis in c. Laudabilem, in verbo, per triennium.*

In impedimento maleficii semper debent conjuges per triennium simul habitare, quod cum hoc impedimentum sit temporale, per tempus potest removeri. *Panorm. in cap. 1. de Frigid.*

Nec video quare naturaliter frigido, habenti purbertatem plenam, triennium integrum concedendum. *Host. in cap. ult. de Frig. in verbo, Cognoscendi alias. Idem in verbo Triennium.* Nec puto quod Judici liceat abbreviare triennium, *subaudi,* quando agitur de maleficio, licet aliud sit in frigidityte. Nam in frigido non semper expectatur triennium, in maleficiato semper. *Rota Decis. 54.*

known whether you can consummate. And as in such Case Impotency is a Vice of Nature, which cannot be repair'd, but by the Omnipotence of the Creator, it ought to be judg'd remediless; for the Canons look upon Impotency as desperate, when its Cure requires a Miracle.

It is not so with Sorcery; that is never but an Accident, which may indeed be perpetual; but is never presum'd to be so, but when it holds above three Years: * So that in order to know whether it be perpetual or temporary, the Nature of it must be explor'd by a Proof of three entire Years: And then, say the Canonists, *Tempus est de solemnitate probatoriâ*, 'tis a time of solemn Probation. This Doctrine is grounded upon Chapter *Littera de Frig.* which speaks of a Husband under Incantation, as is manifest from two Tokens; the First, because the Husband was impotent only in respect to his own Wife, tho' she was aptly organiz'd, for by that Character Sorcery distinguishes it self; the Second, because the Ecclesiastical Judge had inflicted Penance upon the Husband and Wife, which is never done but in Cases of Sorcery. † Thus the true Use of

* *Et dicitur maleficium perpetuum, quod intra triennium per exorcismos & orationes non cessat. Innoc. in cap. ult. de Frig. This Innoc. was afterwards Pope Innocent IV. Maleficium per triennium præsumitur perpetuum. Decis. 54. Rota inter eas quæ additæ sunt ad calcem novi Zacchia.*

† *Histiensis, upon the last Chapter de Frig. in verbo, ut agerent poenitentiam, says, Per hoc satis evidenter apparet, quod hæc decretalis potius sit intelligenda in maleficiato, quam in naturaliter frigido, quia facilius solveretur per poenitentiam maleficium, quàm impedimentum naturale; nec invenio expressum, quòd ad*

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Triennial Cohabitation is, where there's Suspicion of Witchcraft, Fascination, tying up of the Cod-piece, or some other Impediment apt to vanish away with time. Now, as the Parliaments are not over-credulous to magical Operations, this Case rarely comes in use; and this Reason join'd to that which will be spoken of by and by, is probably the Cause why we find among us so few Footsteps of Triennial Cohabitation.

To these Observations, we must add two others; the First, that according to the Text of the Decretal *Laudabilem*, the Wife is not oblig'd to prove, after three Years, the Insufficiency, or rather Failure of Consummation, by any other Proof than that which the Canons and Capitularies of Charlemagne call *rectum*, or *verum*, or *justum judicium*; that is to say, by her own Oath, and that of her near Relations, who are to swear, *non scientia sed de credulitate*; not that they know, but believe. For they are not oblig'd to affirm, that there has been no Consummation, because such a Negative cannot fall within their Cognizance: They are only to swear, that they believe in their Conscience, that tho' the two Spouses did buckle to, in order to consummate their Marriage, yet they were not able to accomplish it. This Oath was call'd *Justum Judicium*, just Judgment, for two Reasons; *Justum*, because it was taken upon the Holy Evangelists with great Solemnity; *Judicium*, because that Kind of Proof was, as is seen per *Tit. de Purg. Canon*, the most frequent of those us'd in Judgment, when they had to do with an occult Fact. Therefore, according to the Chapter *Lauda-*

solvendum impedimentum naturale indicatur pœnitentia.

Anacharanus says the same on this last Chapter, No. 10. and Innocentius, *ibid.* says, *Per hæc convincitur, quod hæc Decretalis loquatur de maleficio.*

bilem, all the Proof of Impotency after three Years was founded upon the Faith and Religion of the Wife, as well as upon the Faith and Religion of her near Relations. Thus the Wife was not reduc'd to prove her Virginity, not because Virginity was judg'd investigable, if I may use that Term, but because they well knew that the Impotent Husband, either by other Persons quarter'd upon her, or by means of Organs destin'd for another Use, might have put his Wife in the Condition of those who do not pretend to be Virgins.

THE Second Observation is, that this ancient Practice, prescrib'd by the Decretal, is no longer in force. For in the Places, and in the Cases where the *Triennium* is observ'd, they no longer content themselves, after three Years, with the Oath of the Wife, or that of her Kindred, but proceed to examine whether her Virginity has escap'd the matrimonial Cohabitation. But because it wou'd be difficult for Virginity to avoid the Snares which an Impotent Husband might lay for it by means of a foreign Corrupter, they guard it against that Danger, by sequestering her Person in a Friend's House, the Doors whereof are open to the Husband at all Hours Day and Night; a * Precaution which *John Andreæ, Hostiensis, Ancharanus*, and the other Canonists, have borrow'd

* Sed quid si vir suspectus habeatur, quod faciat corrumpti mulierem propter magnam dotem, quam habet mulier? serva consilium *Capituli*, cum Locum de Spons. *Hoff. in cap. ult. de Frig. Idem, upon the Word Puellam of the Chapter cum Locum.* Ea puella timet deflorari, si in potestate viri remaneat, unde non potest ei provideri, nisi sequestratio fiat. *Idem, upon the Chapter Causam de probat.* Sed quare non restituitur viro? quia cum dicat se virginem, time-
tur

orrow'd from Chapter *cum Locum, de Spons.* and which the *Rota* never fails to observe: But such a Precaution as only serves against the Attempts of Strangers, and which is still a very ineffectual Preservative against the Irruption of the unnatural Organs of the Husband.

ALL these Truths being pre-suppos'd, as so many Foundations; I say, in the first place, that the Impotence which the Marquis *de Gesvres* is arraign'd of, is not of the Number of those, which, according to the Canons, require the Probation of the *Triennium*.

I SAY, in the second place, that tho' the Parties were in the Case where Triennial Cohabitation is order'd at *Rome* and other Countries, it were Argument enough against ordering it here, that it is not the Custom of *France*.

I SAY, in the third place, that the Reasons which have banish'd that Proof from among us, are in fact unsurmountable, and plainly shew how impracticable an Essay of three Years is, especially when the principal Proof of the Wife consists in her Virginity.

tur de defloratione, & ided debet poni in loco tuto: & nota quod de loco tuto semper est per judicem providendum.

Ancharanus in d. Capitulum ultimum.

Pone ergo, quod vir qui fortè divitias mulieris diligit, procurat ut ab aliquo corrumpatur occultè, ut sic non separetur, nam multæ sunt malitiæ hominibus ad malum. dicit Joannes Andreas; recurrentum esse ad consilium cap. Cum Locum de Sponsal. And indeed 'tis plain from the 14th Decisim of the *Rota* above quoted, that whenever the *Rota* thinks fit to grant some Time to the Husband to prove himself, it always provides, as far as may be, for the Security of the Wife, when she says she's a Virgin.

TO confirm my first Proposition, I need only ask the Marquis de Gevres, whether he talks like those Husbands for whom the Decretal *Laudabilem* was made? Does he say, like 'em, *If I have not consummated, I will consummate*? Does he charge his Impotency to any transitory Accident, to any Malady, to any Sickliness of Constitution, which Time may remedy? Nothing like it. He maintains that he has consummated: He goes farther, he makes Elogiums upon his Constitution; and will have us acquiesce in that excellent Habit of Body, which he has so loudly trumpeted in this Court. Now what else can be inferr'd from this, but that his Impotency not being the Effect of a Malady, or an Accident, or Sickliness of Constitution, it cannot possibly be ascrib'd to any thing but a Vice of Nature, irreparable by any but the Author of Nature?

WERE we in a Country, where Incantations and Witchcrafts were common, a Doubt perhaps might be made concerning the Cause of the Impotence; but in France People are not superstitious as to magical Operations, and do not without strong Reasons presume upon Sorcery: Nor does the Character of the Marquis's Impotency fall in with that Idea. He might indeed be presum'd to be under an Incantation, if by his Operations he had, like other Lords of his Age, acquir'd a Reputation with the fair Sex, and met with no Impediment but at home in lawful Endearments. But there's no more than one Voice with respect to him; lawful or unlawful, he's alike interdicted. Now 'tis by this Mark, natural Frigidity is distinguish'd from Sorcery, *Frigidus uni*, say the Canonists, *frigidus est omnibus*; Frigid to one, and Frigid to all.

THAT may be, say some; but the Marquis de Gevres is so young, that 'tis not time to despair as yet. Who knows but there may be in him some hidden Principle which is ripening, and only wants a certain Age to open into Blossom?

To

To those who talk thus, I answer, first, That if people were allow'd to argue by *May-be's*, which may never be, there wou'd no longer be any certain Principle, because there's nothing but what may be feign'd with a *May-be*, or a *Who-knows-but*: But the Way to put a check to the License of such Fictions, is to stick to the ordinary Course of Nature. And because *Hostiensis* and the Canonists have upon that Head settled certain Principles, it is fitting to deduce them, and at the same time to take notice of the Foundations of them. They are these:

If the two Chapters *Accepisti* and *Laudabilem* alluded to one and the same Class of Impotency, it were impossible to reconcile them, because according to one, the Wife is to sue in six Months after Marriage; whereas according to the other, she ought to stay three Years. And the Difficulty will not be eluded, by rejecting the Authority of the first of those Texts, under pretence that it is taken *ex Brocardico*, an unknown Piece. For be it borrow'd from whatever Author, it is equally true that *Gregory IX.* gave it a place in his Compilation of the Decretals; which he cou'd do for no other End, but to impart to it the Authority and Sanction of a Law. So if it is not a Law by Nature, 'tis one by Adoption, and that's as well.

How then, says *Hostiensis*, are we to account for the seeming Contrariety of this and the Chapter *Laudabilem*? There is but one Way of doing it; and 'tis this. The Chapter *Accepisti* must be suppos'd to speak of Men fully form'd *, that is to say, such as

* *Conjuges gaudebant plenissima p[ub]ertate, ideo autem hic dicit per unum aut duos menses, aut annum, quia si masculus sit sexdecim, aut decem & septem annorum, semper sunt expectandi, quousque plena p[ub]ertas completa sit, & postea tempus est arbitrium.* *Host. in cas. 1. de Frig.*

have attained to full Puberty, and turn'd of Eighteen. For 'tis well known, the Civil Laws have fix'd perfect Puberty to that Age, as the ultimate Period, after which Nature makes no new Presents to Man; and therefore well does this Chapter say, there's no need of a very long Space to make Proof of a Husband, *cito enim & in parvo tempore sciri potuit si cum eâ coire potuisset*. For it may easily and in a short Time be known whether you can consummate. Why in *parvo tempore*? Because the Husband had exceeded the Age fix'd for complete Puberty, and in such Case, a Night or two was enough to make a Trial of, *hoc primâ nocte sciri potest*. It may be known the first Night.

As for the Chapter *Laudabilem*, continues *Hofstiensis*, it speaks only of such as are yet under the Age of Eighteen, and it decides that they ought to have three Years allow'd 'em, (if there's Room for so much Space) in order to gain full Puberty; in a Word, a Husband, says that great Canonist, ought to be allow'd as many Years as he wants of being Eighteen: Three Years, if he's in his Fifteenth; two, if in his Sixteenth; and one, if he's in his Seventeenth; and after he has reach'd Eighteen, the Rule is to give him for further Proof a Month or two, or some other Space at Discretion, after which he's to be adjudg'd impotent, if he cannot acquire himself of his Duty*.

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* Quod frigiditas statim probari non potest, puta quia vir habet tantum semiplenam pubertatem, id est, quatuordecim annos aut quindecim, in qua ætate consuevit masculus contrahere communiter, & sic oportet expectare quousque habeat plenam pubertatem, ergo si sit quindecim annorum, expectabitur per triennium; si sexdecim, per biennium; si decem & septem,

IT is clear, this Reasoning of *Hostiensis*, follow'd herein by the Bulk of the Canonists, supposes for a foundation that the Age of Eighteen is the critical Age, the *ne plus ultra* of Hopes; in short, the Age that decides the Ability or Inability of Man; so that to build after that Age any Hopes upon what's to come, is to build Castles in the Air. And this because the Laws have determin'd, that full Puberty is acquir'd at Eighteen.

NOW taking this Principle for granted, what can we expect from the Marquis de *Gesvres*? He was full Eighteen Years of Age in Sept. 1710. from that Time to May, 1712. (when Madam de *Gesvres* quitted his Company) is an Interval of Eighteen Months. So here's Eighteen Months Co-Habitation, posterior to full Puberty: If therefore in those Eighteen Months he cou'd not consummate his Marriage, tho' he was beyond his full Puberty, it is clear, according to the Doctrine of *Hostiensis*, that he never will consummate; which being so, his Age cannot serve for a Pretext for triennial Co-Habitation.

BUT if the Partisans of the Marquis de *Gesvres* don't like this System, let us follow the common System, and suppose every Man capable of accomplishing his Marriage at the Age of Fourteen. The Marquis de *Gesvres*, who was near upon Seventeen when he marry'd, cou'd therefore have consummated the very first Day. And yet he has liv'd two Years and nine Months with Madam de *Gesvres*, without being able to do it; he must therefore be concluded incapable of Consummation, and the more so, because

septem, per annum; si decem & octo, per mensem, per duos, vel arbitrariè. *Host. in cap. Laudabilem, in verbo, Frigiditas; idem in cap. Puberes de Despons. Impub. Ancharanus teaches the same Doctrine on cap. 1. de ult. de Frig.*

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he's of an Age wherein Capacity is not us'd to conceal it self, if Nature has bestow'd it.

I THINK I have prov'd my first Proposition; the Impotence of the Marquis de Gesvres is not of the Kind of those which require the *Triennium*, ev'n according to the Principles of the *Ultramontani*, and his Age wou'd be rather a Reason to refuse him than grant him a Three Years Co-Habitation. We shall now proceed to the Second, and shew that the *Triennium* not being Customary with us, it wou'd be against the Rules to recur to it in this Cause.

WE don't presently find by any Precedent, that the triennial Co-Habitation has been order'd, or if it has, the Decrees have set it aside. This is the Reason why our *French* Practitioners keep a perfect Silence upon this Head; this too is what has oblig'd 'em to borrow from beyond the Mountains the Rules above-cited.

'Tis true, two Authors of the last Age, *Tagareau* and *Hotman*, did attempt to introduce this Practice amongst us. But as for the latter, 'twas known he had his Reasons for espousing that Course, and there's room to judge from the Writings of the first, that he defended the Cause of *Debray* (a declar'd Impotent) because of his miscarrying in the Trial of the Congress. For these Reasons therefore it chiefly was, that those two Authors had a Grudge to the Congress, and their Intention was to bring in its Room, the triennial Co-Habitation as an Essay more commodious for the Husbands, their Clients; but the same Writings which they publish'd to preach up the *Triennium*, discover plainly that the Practice of it was unknown, as it still is.

PERHAPS 'twill be said in Answer to this, the Trial by Congress being more expeditious and more satisfactory than that of the *Triennium*, there's no wonder it superseded the other; but that the Congress

ess being banish'd, the *Triennium* ought to take its
 place.

To this I answer, that the Congress prov'd at most
 an Impotency but of one or two Hours; and suppo-
 sing that from this momentaneous Impotency, cou'd
 be concluded an Impotency for the Time past, at
 least they cou'd not infer from thence an Impotency
 above one Year, if the Marriage had been but
 one Year; or two, if it had been two; but there re-
 main'd either a second and third Year, or only a
 third, during which the Husband was to have es-
 say'd, and yet this Remainder was refus'd him, be-
 cause they judg'd that one that had been in-
 sufficient during a Year, was so for his whole Life;
 from whence 'tis easy to conclude, that they were
 not of Opinion the Probation shou'd extend to three
 Years. To make this plainer, 'tis certain that when
 a Husband was put to the Congress in the first or se-
 cond Year of his Marriage; he found himself disap-
 pointed of Part of the Time destin'd for the Con-
 tinuance of his Probation; and if he did not approve
 himself in six Months, nay two Months, he was se-
 parated from his Wife. For what Reason this? only
 because the Term of three Years was always deem'd
 too long, and that they judg'd according to the Chap-
Acceptisti, and the Sentiment of *Hoftiensis*, that with
 Respect to a full form'd Man who has exceeded his
 star'd Puberty, a Probation of some few Weeks was
 sufficient, *citò enim & in parvo tempore sciri potuit si cum
 ea coire potuisset.*

THIS Truth is illustrated by the Decrees cited in
 the Marginal Note of *Cophin. Book 2. Tit. 7. n. 22.*
 In the first Case, a Husband had liv'd but two Years
 with his Wife; and in the second, but fourteen
 Months: One of 'em had fail'd in the Congress, the
 other wou'd needs have the triennial Co-Habitation
 substituted instead of the Congress, and both claim'd
 the *Triennium*, as a Period of Time set by the Canons
 for

for the Discovery of Impotency; but neither of 'em was regarded, and their Mouths were stopp'd by a short Word out of the Chapter *Laudabilem, si Frigiditas prius probari non possit*. If Frigidity could not be prov'd sooner. The Canons, they were told, do not exact from the Wife a Forbearance of Three Years, but when such Forbearance is necessary to ascertain the Impotency; but for your Part, said the Court to one of 'em, you are already prov'd impotent, by miscarrying in the Congress; and as for your Impotency, said they to the other, that shall be presently prov'd by the Congress. To what Purpose then shou'd we expose to the Horrors of a three Years Co-Habitation, these Wives who complain of your Frigidity?

HERE I make a Reflection, and say, this Answer, tho' a just one, wou'd not have satisfy'd the Objection, had the Term of three Years been a necessary Term. For in short, what cou'd be prov'd from the Congress, preceded, as it was, by an Inspection of the Wife? What, I say, cou'd it prove, but that during the two Years, or the fourteen Months of the preceding Co-Habitation, those Husbands had languish'd in Frigidity and Impotency? But cou'd not the one have got rid of his Languidness in the Year that remain'd? And the other in the two and twenty Months? We may therefore truly say, that it was never held as a Maxim in *France* any more than at *Rome*, that the Proof was no Proof till after three Years, and by necessary Consequence the *Triennium* was never practis'd there.

FROM this general Principle I descend to Particulars, and do say, that the Marquis *de Gevres* having liv'd with his Wife two Years and nine Months, he wants but three Months to complete the three Years. For to think to deduct for the Time spent in the Campaigns and Absences, is a Jest; for if this reckoning of Absences were to take place, the three

Years

Years would never be out; for the Husband need no more than absent himself, and so spin out the three Years to his Life's End. Therefore 'tis a Maxim among all the Doctors, that the Co-Habitation of three Years ought to be understood a Moral Continuity, and such as is commonly practis'd between Man and Wife, who are sometimes separated from each other by the Necessity of Affairs. *Hæc Triennium*, says Sanchez, *non debet esse mathematicè continuum, sed intelligitur civili modo.* This three Years ought not to be understood of mathematical, but civil Years.

I SAY then, that forasmuch as the Marquis *de Gesvres* has dwelt with his Wife for three Years, save three Months, all that may be granted him, amounts but to the three Months which are wanting to fill up the three Years. But neither may that be done, without an excessive Nicety which wou'd be next kin to Superstition. For it were to suppose that a Husband can't be judg'd impotent, unless he went thro' a Trial for three whole Years; and we have just now made appear that that Principle is absolutely false, contrary to Experience, contrary ev'n to the Canons, which require but a very little Time to evince Impotency, *cito enim & in parvo tempore, &c.* contrary likewise to the Jurisprudence of Decrees, and ev'n to the Jurisprudence of the *Rota*, where 'tis a Maxim, that in *frigido semper expectatur triennium*, and that in *frigido iudex potest abbreviare tempus triennij.* In the Proof of Frigidity the Judge may appoint less than three Years.

I RESUME after this the Argument which was us'd to those two Husbands, who by the Decrees I just now cited, were frustrated of a good Part of that *Triennium* which they claim'd. They were answer'd thus, You in vain demand the *Triennium*, because the *Triennium* is never granted but when Frigidity cannot be manifested without the Probation of three Years;
but

but your Frigidity is already manifested, or may be manifested by the Congress. In like manner say I, 'tis unnecessary to allow the Marquis de Gesvres the three Months that remain to complete the three Years, since his Frigidity may at once be manifested by the Visitation which Madam de Gesvres demands.

THAT the Visitation can render the Virginity certain, is what has been prov'd by the Replication; so all that remains to be examin'd, is, whether a Virginity which has preserv'd it self during a conjugal Cohabitation of two Years and nine Months, is not an Argument of a Husband's Impotency, at least as convincing as the Congress was heretofore. For if it has the same Force, it is evident, that as formerly the Congress render'd the *Triennium* improper, 'tis at this Time the same Thing with the Visitation of the Wife. Now it is not possible to doubt, that after so long a Co-Habitation, Virginity is as strong, nay a stronger Proof than the Congress; therefore the *Triennium* is not less improper now, than it was in the Time of the Congress.

THAT Virginity is a stronger Proof than the Congress, is what cannot be question'd. The Congress cannot of it self prove an Impotency of above one or two Hours; but Virginity proves an Impotency for the whole Time of Marriage: By the Congress they cou'd be sure of only a momentaneous Impotency, but by Virginity we are sure of a successive and continu'd Impotency; and for that Reason the Congress was always preceded by an Inspection of the Wife, without which it cou'd afford nothing but an absolutely false and deceivable Proof. In a word, it borrow'd its whole Force from Virginity, and it was in the Virginity that the fundamental Proof resided, because that was the very Thing that shew'd the Husband's Impotency to be habitual. As for the Congress, it was only accessory, and properly speaking, a simple *Adminiculum* of that Proof, because all

demonstrated was, that the Impotency was actual at the Moment of Congress. Thus the Habit being once prov'd, the Act hardly proves any thing at all; and therefore it was with Reason said, that the Congress was only an *adminicular* Proof of Impotency, whilst the principal Proof was that which resulted from the Wife's Virginity. The Wisdom of the Decrees has taken away this Prop, this *Adminiculum*; but the fundamental Proof is left. And with us that Proof which always was the capital Proof, ought without a Prop to have the same Effect it us'd to have when its Prop cou'd be joyn'd to it.

I SAY therefore to those who are for reviving the *Triennium*, that their Pretension carries with it a manifest Irregularity, and that while they think they're executing the Canons of the Church, they wou'd violate them; since those Canons do not permit the *Triennium*, but when Impotency cannot be sounded out by that Plummert. Which cannot be said in our Case, since Madam de Gesvres's Virginity holds forth to us a far more certain and infallible Touch-Stone. And as for saying, that before Virginity can be a Touch-Stone of Impotency, it must have stood a Siege of three Years, is a Principle whose Falsity has been already demonstrated, not only from Reason, from Experience, and from the Canons, but also from the very Maxims of the *Ultramontani*, those of the *Rota*, and the Jurisprudence of Decrees.

To this I must add what has been said in the Republication, to shew that Virginity has ever been look'd upon as the strongest and most invincible Proof of Impotency that a Wife can possibly produce. Nor ought I to omit to back it by this Saying of Innocent IV. upon the Chapter *Proposuit*, *Hac probatione*, says he, *qua fit per aspectum virginitatis, non est melior probatio secundum Canones*. There is not a better Proof of Virginity in all the Canons, than this by Inspecti-

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on. I may also joyn thereto the Authorities cited by Sanchez in Disputation 109. Tit. 7. where he shews, that Impotency is prov'd *per rectum judicium*; that is, canonically, when on the one Side the Husband is suspected of Impotency; *quando apparent dubia signa frigiditatis viri*; when there appear suspicious Signs of the Man's Coldness; and on the other, the Wife is found to be a Virgin, *et uxor reperitur virgo*.

IN our Case, the Marquis de Gesvres is recogniz'd a suspected Impotent, by Reason of the Searchers finding him without any Signs of Motion; Madam de Gesvres, on her Part, offers to prove her self a Virgin; therefore if this Virginity is once prov'd, the Impotency is ascertain'd, according to the Principles of Sanchez, and if it be ascertain'd, to what Purpose is a longer Trial? *Frigiditas prius probari potest, ergo non debet expectari tempus triennij*. Frigidity can be prov'd sooner; therefore one ought not to be kept in Suspence three Years.

THE Reasons which I have been deducing, are partly those which have shut out from among us the Practice of triennial Co-Habitation. I say partly, because others of them will be found in the settling of the third Proposition; and whether that be so or no, 'tis Argument enough for its Rejection, that Custom has rejected it. For in these Matters 'tis a dangerous Thing to depart from Custom, which is what is call'd *Experientia, rerum Magistra*. Experience, the Mistress of Things. And in this Spirit did the Parliament act in its Decrees. Before the Abolition of the Congress, all the Husbands who were arraign'd of Impotency, us'd loudly to declaim against that monstrous Kind of Essay, equally accusing it of Turpitude and Uncertainty. And it has appear'd since, that they had Reason on their Side. And yet Custom, stronger than all these Declamations; stronger ev'n than Reason's self, if I may so say, forc'd the Parliament to declare irregular the Proofs which the

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Officials attempted to substitute in the place of the Congress. Why so? Because in such nice Points, People ought to be jealous of Custom. And this by the bye serves for another Answer to that Torrent of Eloquence, which the Marquis de Gesvres has let fly against inspecting his Wife: 'Tis a disagreeable, a mortifying Custom, I own; but it is a Custom, and which is worse, a necessary Custom. All that the Marquis de Gesvres can oppose to it, is not stronger than what was said against the Congress. Nay, 'tis plain, there's no Comparison between the Objections heretofore made against the Congress, and those now made against searching the Wife. If therefore the former were set aside while the Practice of the Congress subsisted, ought the latter to expect a better Fate now, when the Practice of judging the Husband from the State of the Wife, is a Practice so frequent, so notorious, and authoriz'd by so many Examples? Again, if it was an Abuse to substitute the Triennial Cohabitation in the stead of the Congress, when the Congress was in Use, tho' that Usage was not authoriz'd by the Laws of the Church; wou'd it not be a much greater Abuse, to substitute that Cohabitation in the stead of the Inspection of the Wife, which is a kind of Proof not only in Use, but approv'd of, and confirm'd by the Canons?

HOWEVER, that there may be nothing left unanswered, we must confess, there is one (and but one) Precedent of Triennial Cohabitation, and that is in the Year 1673, in this Court. But in that Case, all the three Circumstances for which the *Triennium* seems to be invented, did concur, *viz.* 1. A very incompleat Impotency, and such as afforded Hopes of being cur'd in time. 2. An Impotency which favour'd of Witchcraft, because it carry'd with it the Tokens of those Conjugal Dissensions, which may be dissipated by Cohabitation; and lastly, A Maidenhead lost, either by the Approaches, or the criminal Practices of

of the Husband. When these three Singularities meet, Triennial Cohabitation may be an innocent Remedy, a Remedy, in that it may restore the Ability of the Husband, and therewith the Union of both him and his Wife; Innocent, in that the Wife who has lost the Evidences of her Virginity, runs no risk in falling again into her Husband's Hands, since the Husband cannot possibly take from her a thing which cannot be twice lost. But bating this Example, which is single, and has its peculiar Reasons, it does not appear that the Triennial Cohabitation, which in effect is only a Congress of three Years, has been made use of, no, not since the Abolition of the Congress. And therefore Mr. Gerbais, who wrote his Treatise of the Church's Power above 20 Years after the Decree that banish'd the Congress, was in the right to say, pag. 442. that the *Triennium* is not us'd in France.

BUT if what we have been saying, proves that it is not us'd, it will appear from what we are going to add, that it may not be used.

AND this brings us to the third Proposition, namely, that the Triennial Cohabitation is impracticable.

THE Disorders and Impurities which unavoidably follow from a Wife's cohabiting with an insufficient Mate, ought doubtless with the Ministers of the spotless Lamb, to be Reasons of great Force and Weight, for rescuing a Wife from a Condition either so perillous, or so fatal; but because I'm not unsensible that this Consideration is more cogent in the Tribunal of Confession, than in the exterior Jurisdiction of the Church, I shall content my self with making the Observation, being likewise fully persuaded that the Love of Purity will dictate more to our Judges, than all Mankind together cou'd do: Therefore I pass on to other Reflections.

AND

AND I say, that if Triennial Cohabitation be practis'd, in the manner *Tagareau* and *Hotman* have traced out to us, and which in effect is the same which is taught by the Canonists, it is impossible but it will stifle the Proof of Impotency, instead of assisting it. They require that when the three Years are passed, the Wife, if she continues to complain of Impotency, shall be oblig'd to make her Complaint by proving her self a Maid. Which is the same thing, as demanding her to produce a Jewel she's no longer Possessor of. This is easily conceiv'd by any Body who knows what Rage, Policy, Punctilio, Interest, and sometimes Dread of the utmost Misery, may put an Impotent Husband upon doing, when that same Virginity which is to convict him of Insufficiency, lies at his Mercy. This is yet more easy to conceive to any Body, who knows how brittle a thing a Maidenhead is, and how tenderly it ought to be handled; in short, to any body who knows how impossible it is, when once 'tis perish'd, to find out whether it dy'd a natural Death, or a violent one. This Danger is so great, and at the same time so inevitable, that hardly any thing but a Miracle can save a Wife from it; and I can't enough wonder how those forecited Authors and Canonists cou'd suppose that such a Miracle shou'd offer every Day.

WHAT's most amazing is, whilst they leave the Wife expos'd to the Enterprizes which the Husband may execute without an Accomplice, they take mighty Precautions to guard against those Enterprizes, which require the Concourse of another. They're afraid, as is before shewn, lest the Husband should suborn a Corrupter, and quarter a Stranger upon her, in order to bring an Eclipse upon her Virginity; and therefore they have thought of sequestering the Wife in some third House, according to the Remedy taught (tho' for another Case) by Chapter

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cum Locum *. But this Expedient, which may be useful against Dangers from without, is of no Service against those from within. Yet these last are what most to be dreaded, and which unfortunately are unprovided of a Preservative; for 'tis impossible for Human Wit to think of any.

AGAIN, it is certain that the greater the Wife's Fortune is, the more 'tis to be fear'd the Husband will leave nothing unattempted to extinguish that unexceptionable Witness of his Impotency, which the Wife carries about her; that Witness, I say, which alone deposes against him. This is an Observation of *Hostiensis* and *Ancharanus*: *Quod si vir*, says the former, *suspectus habeatur quod corrumpi faciat mulierem propter magnam dotem quam habet*, &c. If it be suspected that the Husband will cause his Wife to be deflower'd, to save the great Fortune he hath with her. *Pone*, says the Second, *quod vir qui fortè divitiarum mulieris diligit, procurat ut corrumpatur*. Suppose the Husband, in Love with his Wife's great Fortune, shou'd procure her to be corrupted. Thus the Danger increases proportionably to the Wife's Estate, and this is natural; the richer the Wife is, the more violent is the Temptation for the Husband, and the more terrible the Danger for the Wife.

* When the Rota thinks it fitting to allow a Husband, who is arraign'd of Frigidity, some time of Cohabitation, which it prudentially regulates, (for it seldom extends that time to three Years) it takes all imaginable Precautions, to secure the Wife's Virginity against the Enmities of the Husband. This is what is manifest from these Words of the 14th Decision. *Reservarunt Domini de Rota videre qualis esse debeat ac quantus hujusmodi terminus, cum pluribus in casibus Doctores illum arbitrio judicis relinquunt—Præterea decernend-*

IF the Chapter *Laudabilem* was practis'd in the terms 'tis drawn up in, and if the Wife cou'd after the three Years prove Default of Consummation by her Oath, and the Oath of seven of her near Kindred, she wou'd not indeed run quite so great a risk. But the modern Principles require, that the Virginity shall not undergo Cohabitation, and that the Wife shall be believ'd from a Report of Matrons. Now to impose Triennial Cohabitation upon a Wife, is the same thing as obliging her to produce Evidences, which the Enemy may every Moment Day and Night tear in Pieces with the greatest Facility. 'Tis properly giving her up to his Mercy: 'Tis prejudging the Cause in Favour of the Husband.

I SAY therefore in these Circumstances, that if the Probation of three Years be one of those Iron Rules, which never bend either to Necessity, or the Judge's Prudence, Madam de *Gesures* wou'd be ruin'd, not by the Judge but by the Law. But Triennial Cohabitation is so far from being an inflexible Law, it is certain that in the very Places where this Law is most respected, it is always subjected to the different Considerations that arise in the Judge's Breast. In short, 'tis arbitrary; and all of it that is not arbitrary, is, that it is never to take place but in the utmost Extremity, *si frigiditas prius probari non possit*; if Frigidity cannot be prov'd sooner.

IF this be so, did there ever offer an Occasion attended with stronger Considerations for setting aside all Thoughts of Cohabitation, than this Case of ours?

It is also true, that there is a great deal to be wish'd, we cou'd know how it fortify'd the Wife against the Danger her Maidenhead runs, on the part of the Organs which are obedient to the Husband.

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Are not two Years and nine Months enough to judge of the Marquis *de Gesvres's* Impotency in? Can it be expected he will do that in three Months, which he could not do in almost three Years? Can it be believ'd that at twenty Years of Age, he will be another Person from what he was at Eighteen or Nineteen. Is he not already half convicted of Impotency by the Searchers Report, and yet more by his Backwardness to wipe away the Presumptions rais'd against him by that Report? Will not that Demi-conviction become compleat by the Proof of Virginity, which with Certainty will verify an habitual and successive Impotency, from his first marrying to this time?

I'll be bold to say, that it would be ruining Madam *de Gesvres* for nothing at all, and purely for Ruin sake, to reconcile her to the Marquis *de Gesvres*, I don't say for three or for one Month, but a single Day; for it wou'd be admitting a temporary Expedient, which might indirectly and very easily be turn'd into a perpetual definitive Adjudication; and I see but one Way to hinder it, namely, to make it part of the Sentence, That after the Time of the Cohabitation is expir'd, Madam *de Gesvres* shall be credited concerning Default of Consummation, upon her Oath, and that of seven of her near Relations, according to the Form prescrib'd by the holy Decretals. Were this Expedient authoriz'd by Custom, as 'tis by the Canons, it wou'd really put an end to the greatest Inconvenience of Cohabitation, because then the Proof of Impotency wou'd no longer depend upon the Proof of Virginity, but upon the Oath. Now Gentlemen are to consider, whether this last Proof being no longer in use for all its Canonicalness, it can be preferr'd to a customary Proof, which is at the same time canonical, namely, the Search after Virginity in the Wife's Person. They are likewise to consider whether this *Medium*, which People are unacquainted with, is like to be relish'd by the Parliaments; and

and whether the Impotency of the Husband will become more evident from the Oath, than from the Inspection of the Wife.

I SAID, that the Expedient which I propose, puts an end to the greatest Inconvenience ; for it does not to all. Where will you presently find that House of Sequestration, which will readily take up with the Probation of the Marquis *de Gesvres*, and subject it self to receive him at all Hours Day and Night ? This House must be safe, it must be reputable ; they must be Ladies, and Ladies of Distinction, who must be answerable for the Person of Madam *de Gesvres* : And where shall we meet with such that will be Slaves to such Complaisances ? If they are Relations of Madam *de Gesvres*, the Marquis will suspect that House ; if they're Strangers, and Persons indifferent, the very Proposition of fixing the Scene in their House will be an Affront. How then shall we get out of this Perplexity ?

THIS shews that Cohabitation is only speculatively fair ; for so soon as you descend to the Practick, you meet with unsurmountable Difficulties : And for this Reason our Forefathers were forc'd to prefer to it the Congress, as monstrous as 'twas ; for this Reason too, the Use of Cohabitation was not reviv'd, even after the Abolition of the Congress. In *France*, all the Proofs of Impotency have been made to consist in the Inspection of the marry'd Couple, and this in Fact is the certainest Way of all. For as to the other, it depends on the Concourse of two Wills reciprocally adverse, and incapable of mutually joining in an Operation which requires the most perfect of all Friendships.

THIS is what we thought our selves oblig'd to represent on the Behalf of Madam *de Gesvres*, with relation to Triennial Cohabitation ; and 'tis hop'd these Reasons will be thought no less cogent than those of the Plea and Replication. All that Madam *de Gesvres*

after this has to wish, is, that she had such an Advocate to plead for her, as the Marquis *de Gesvres* has made choice of to plead for him; What Miracles, what Wonders might he not promise himself, if together with his Wit and Excellent Talents he had a just Cause to defend! This we may judge from the good Countenance he puts upon a bad one: And in that Case, Madam *de Gesvres* wou'd not need to fight against Cohabitation. He wou'd have so thunder'd against, and batter'd that Idea, it wou'd have been very insignificant to have attack'd her any manner of way.

BEGON, *Counsellor.*

BERNARD, *Attorney.*



General ANSWER to the Marquis de Gesvres's Memorial, concerning the Necessity and Certainty of the Proofs of Impotency in general: As also concerning the Parallel of the Proof resulting from the Inspection of the Wife who affirms she's a Virgin, with the false Arguments borrow'd from the Configuration of the Husband.

THE Marquis *de Gesvres* might have contented himself with scandalizing the Court by unheard-of Propositions, which had been so ill receiv'd by the Audience: We little thought he wou'd have taken the Pains to spread 'em in the World, and less still to employ for this Use the Pen of a Writer renown'd for Gravity. But since that Writer has been pleas'd to lend the Ornaments of his Style to such Para-

Paradoxes, he will give us leave to shew him how undeserving they are of such Garniture.

WE don't propose in this Piece to refute Point by Point that of the Marquis de *Gesvres*; such an Answer wou'd savour of Folly. We only propose to unveil the main Foundations of his System, because we assure our selves that to expose them to Sight, is to inspire People with all the Contempt for 'em which they deserve.

THE *Memorial* now to be answer'd, falls upon the Complaints of Impotency, as a prophane Novelty, contrary to the Divine Institution; a scandalous Discipline, contrary to the publick Peace; and a senseless Practice, in supposing Impotency can be discover'd. Sacrilege, Scandal, Nonsense; all these, our Author will have it, are the Concomitants of Suits commenc'd for Insufficiency: And from thence he leaves it to others to conclude, that, to re-establish good Order, such Suits ought absolutely to be banish'd, or the Proof thereof limited to the sole Inspection of the Man's Conformation, without suffering to examine the Capacity of such Conformation.

IT is evident, that this Project contains the Idea of a new general Regulation; and that the Author of it does not pretend to play the Canonist, but the Legislator. There must be Laws spick and span new for the Marquis de *Gesvres*. This is barefac'd; since in pag. 17. of his *Memorial*; he flatters himself that the Church will find a way, *either by resuming the old Discipline, to reject as scandalous all Complaints of Impotency; or in rectifying the new; reduce such Complaints to certain Principles, and manifest Proofs*, that is to say, Conformation. For if we are to take his Word for't, there's no other manifest Proof but Conformation. Now whoever talks thus, declares very plainly that he'll be try'd by no Canons, no Rules of the Church; since those

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Rules and those Canons make so little account of Confirmation, they don't so much as mention it.

THIS necessarily engages the Marquis *de Gesvres* to censure those same Canons, whose Authority he flies from. According to him, there's nothing but Contradiction in their Decisions, Uncertainty in the Proof they have authoriz'd for the Discovery of Impotence, Scandal and Impurity in the Discipline of the Church. According to him, this Disorder has too long prevail'd, and he is come to put an end to't. Well then; let's hear this new Doctor, this Reformer of the Church's Laws, wiser than the Canons, and more zealous than the Popes for Purity of Discipline.

HIS *Exordium* is, that the Sign, Representative of the Union of Jesus Christ and the Church, whereby Christian Marriage is rais'd to the Dignity of a Sacrament, consists in the Indissolubility of the Bond. A new Principle, and productive of strange Consequences! For 'tis clear, that if the Indissolubility of the Bond (abstractedly consider'd, without any Regard to the Party's Ability or Inability) is what constitutes the Essence of the Sacrament, nothing can hinder an Impotent from being capable of this same Sacrament. Do but set aside and abstract that Impotency, and presently the Bond which shall tie him to a Wife, may be indissoluble, and as such, represent the indissoluble Union of Jesus Christ and the Church; which will make a compleat Sacrament of it. And according to this Principle, the Author has Reason to condemn Complaints of Impotency, not only as scandalous, but sacrilegious too. And indeed nothing would be so sacrilegious as to break a Bond which Jesus Christ meant for indissoluble. He has also Reason to censure the Church, the Popes, the Doctors, the Prelates, the Officials, who in Cases of Impotency have authoriz'd the Dissolution of the Bond; and in short, he has Reason to demand an Amendment of the Discipline of the Church.

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BUT if it is evidently false, that the Mystic Sign of the Union of Jesus Christ and the Church (which makes of Marriage a Sacrament) is inherent to the Indissolubility of the Bond; then we shall have Reason to cry, What Theology's this! Whence has the Author fetch'd the Doctrine he preaches to us! We shou'd be glad, if he'd instance somebody that has spoken as he speaks! We know what Jesus Christ has taught, namely, that Man and Wife ought to be two Persons in one and the same Flesh: We know what the Apostle taught after him, namely, that the Husband ought to be the Head of the Wife, as Jesus Christ is the Head of the Church: We know what the same Apostle further teaches, namely, that the Husband's Body belongs to the Wife, as does the Wife's to the Husband. We likewise know what Consequence the Holy Doctors of the Church, the Popes, and after them the Theologists, have deduc'd from these Principles. We are not ignorant that, from thence they have concluded, that the Husband, who is under an Impossibility of uniting himself in one and the same Flesh with his Wife; a Husband who cannot become her Head, by reason of his being unable to make her Flesh his Flesh, and her Bone his Bone; in short, a Husband who is out of Condition of acquiring over his Wife's Body, and giving over his own that reciprocal Power which the Apostle speaks of, is such a Husband as cannot represent on Earth the Celestial Unity of Jesus Christ and the Church; and consequently his Condition resists the Sacrament of Marriage, consider'd as a Mystick Sign of that Union. Which makes his Union with a Wife degenerate into a Prophanation of the Sacrament; and such a prophanation too as is the more sacrilegious, because under the august Veil of a Sacrament, it authorizes a continual Course of Impurities and Disorders.

AND this is what oblig'd the Schools of Divinity to place the mystic Sign, not in the Indissolubility of the Bond, nor ev'n in mutual Tradition of Bodies, but in the Possibility, or which is the same Thing, in the Capacity which ought to be between the two Spouses for attaining that Tradition.

SUCH is manifestly the Doctrine of the Church. Such too was that which Madam de Gesvres's Advocate laid down for a Principle *. For he said not, as the Author of the Memorial artfully supposes, that the Essence of Marriage consisted in *Commixtion*, but plac'd it in the Possibility of the Tradition of Bodies; borrowing the Language as well as Doctrine of the School, and avoiding the filthy odious Term *Commixtion*, which the Author of the Memoirs foists upon him, only to abuse him.

NOW if after this he pretends, that the Maxim is, as he says, *false and impure*, this Censure does not fall upon the Advocate of Madam de Gesvres, but upon Pope Innocent III. who taught this Doctrine in Chapter *Debitum de Big.* on the Master of the Sentences, who has embraced it in Distinction 26; on St. Thomas, who, in the Supplement of the third

* * The very Words of Madam de Gesvres's Replication (pag. 38.) are as follow: For this Reason the Theologists and Canonists make the Essence of Matrimony to consist in a reciprocal Delivery, or as the Doctors call it, Tradition, which the marry'd Couple ought to make of each others Bodies, if not in an actual Tradition, at least in the Possibility of such Tradition; whence it follows that where Tradition is impossible, there is no more than the Shadow of a Sacrament, there's no real Sacrament. The Cunning of the Author of the Memorial was in slurring over the latter Part of the forecited Words, which clear'd up the whole Sense of the Author of the Replication.

Part (*Quæst. 58. Art. 1.*) has follow'd the Master of the Sentences; and on *Soto*, who interpreting the foresaid Distinction 26. has likewise follow'd *St. Thomas*. The Author of the Memorial, 'tis like, did not foresee that his Blows wou'd rebound so far; but 'tis for that very Reason he ought to be warn'd of it, that he may take more Care another Time.

THESE Truths, which have prevail'd in all Times, must necessarily have regulated the Discipline of the Church, as to what concern'd the Complaints of Impotency. For if it be true, that the Marriage of an insufficient Man cannot be a Marriage, but only a Prophanation; it is evident there never was a Time wherein the Church cou'd be supposed not to avenge the Sanctity of an offended Sacrament. If it be true that the Cohabitation of an insufficient Husband with a Wife, plunges both of 'em into an Abyss of Obscenities, nay monstrous and unnatural Obscenities, then neither has there been a Time, when the Church can be suppos'd to have been deaf to the Complaints of a Wife, who has implor'd her, with uplifted Hands, to deliver her out of this Abyss.

AND, to the End that the Author of the Memorial may once for all comprehend the Horrors of the Condition of the Wife of an insufficient Husband, we shall make use of a Comparison, which is indeed coarse, but very proper for presenting an exact and faithful Image thereof. The Wife of an insufficient Husband is said to be a live Body fastened to a dead one; and the Simile is just. For as a dead Body cannot enjoy a live one, because the dead are incapable of Enjoyment; so neither can an impotent Husband enjoy the Body of his Wife, which makes him be without that Rule of the Apostle, *Mulier non habet potestatem sui corporis, sed vir*, The Wife hath not Power over her Body, but the Husband: As on the other Hand, a living Body cannot enjoy a dead one, because the Enjoyment of a dead Body is not an Enjoy-

joyment, but a Punishment ; so neither can the Wife of an insufficient Husband, enjoy his Body ; which makes her be without that other Rule of the same Apostle, *Vir non habet potestatem sui corporis, sed mulier*. The Husband hath not Power over his Body, but the Wife : As in short all the Effect of the Conjunction of a dead Body to a live one, is to cause the live Body to putrify ; so, in like manner, all that the Union of a Wife with an Impotent produces, is to infect the Wife with a Corruption, not sensible or corporeal, but intellectual and spiritual, and consequently more horrible, and more to be fear'd. Now if this be so, why will People have the Church to look on with Indifference, while both the Dignity of a Sacrament is so sinfully prophaned, and the Purity of Souls so essentially polluted ? Carnal Doctors may think there's no great Harm in all this ; but the reverend Doctors of the Church, the Ministers of the spotless Lamb, the Magistrates of the holy *Jerusalem*, do doubtless judge otherwise of it.

THEREFORE it is certain, that in all Ages of the Church, the Dissolutions of Marriage, on Account of Impotency, have made Part of the Ecclesiastical Discipline. Now if we don't find any Monuments thereof beyond the Time of *St. Gregory*, it is because before that Time, the Secular Power claim'd to it self the Cognizance of Suits about Marriage ; as is but too evident from an infinite Number of Laws, &c. of the two Codes of *Theodosius* and *Justinian*. But so soon as ever the Church was free, so soon as ever her Authority over Marriage was acknowledg'd, she did, by the Mouth of *St. Gregory*, declare a Marriage null, on Account of Impotency in the Husband ; and a hundred Years afterwards, or thereabouts, she permitted another Husband, by the Mouth of *Gregory the Second*, to repudiate an uncapacitated Wife, in order to marry another. We have objected these two Examples to the Advocates of the *Marquis de Gesvres* ;

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but still they are incorrigible. They will have it that Complaints of Impotency were never heard of before the 12th Century, and thereby transfer to the Year 1300 the Pontificates of the first and second Gregories.

If this Discipline of the first Ages be joined with that of the latter, so fruitful in Complaints of Impotency, it will be plain that the Body of the Discipline was always the same. As indeed it is impossible for a Discipline that depends upon a *Dogma* to admit of any Alteration, because the Immutability of the *Dogma* that governs it, will not suffer it to vary.

THE Church indeed might have contracted or enlarged the Time of Penance as it saw Occasion: She might have sometimes extended, sometimes restrain'd the Degrees of Consanguinity, within which the Faithful might have been forbid Marriage. These Regulations always depended upon her Prudence; and for that Reason may have been occasionally alter'd; but the Church could not sometimes approve, sometimes condemn the Marriage of an Impotent, nor consequently sometimes admit, sometimes reject the Complaints of Impotency. This necessarily results from the Connexion there is in this Particular, between the Doctrine and the Discipline.

If the Church of *Rome*, as a Particular Church, has said to some Husbands, who found in their Wives Persons an invincible Obstacle to the Union of the Flesh; if, I say, that Church has sometimes answer'd those Husbands, *quas non potestis habere ut uxores, habeatis ut sorores*; if you cannot have them as Wives, have them as Sisters; it necessarily said to the Wives who complain'd of their Husbands Frigidity, *quos non potestis habere ut viros, habeatis ut fratres*; if you cannot have them as Husbands, have them as Brothers: And this Difference had for Foundation the same which Nature put between the two Sexes. For as she establish'd Man to be an Agent, so
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the Part she gave him to act was that of an Aggressor; and therefore it wou'd have been of no manner of Purpose to have said to the Wife, *habe virum fratrem*: Since it had not been in her Power to have look'd upon him as a Brother, who wou'd not have consider'd her as a Sister.

THIS shews, that in no Case the Church of Rome cou'd have propos'd as a Law, or a Precept, fraternal Cohabitation. For the Terms of Brother and Sister are relative Terms, which have their mutual Respect to two different Persons; but so necessarily too, that the Relation cannot cease in the one, but it must cease in the other. Therefore the Remedy, *quam non potest habere ut uxorem, &c.* if you cannot have her as a Wife, &c. necessarily supposes the Consent of both Parties, which Consent alone can maintain that Cohabitation, without which the Remedy becomes Poison. Now if Consent be necessary, 'tis no longer any Thing more than a bare Expedient; and for this Reason the Chapter *Laudabilem*, which proposes it, requires that both the Spouses consent thereunto, *si autem ambo consentiant, vir eam habeat, si non ut uxorem, saltem ut sororem*. If both consent, let the Husband keep her, if not as a Wife, at least as a Sister. The Husband ought to look upon the Wife with a Brother's Eye, and the Wife on the Husband with a Sister's. But they were necessarily engag'd to look upon each other with such an Eye, *si ambo consentiant*: Without that, the Expedient is not practicable. Now wherever common Consent is requisite, 'tis no Law, but only a Piece of Counsel.

WHAT Illusion, therefore, is it in the Author of the Memorial, to give us for a Rule of Discipline, Pieces of Counsel and Advice, which the Church proposed to none but those who were inclin'd to embrace 'em! What Extravagance, to palm upon us a Distinction of Discipline in two several Periods of Time, and this founded upon an Idea visibly false! There

There were no Distinctions of either first or second Periods, since the Doctrine being the same, the Discipline must necessarily have been so too.

HERE therefore we see that Complaints of Impotency are as old in the Church as the Exercise of her Authority over Marriage is. Here we find Discipline beginning as soon as possible it cou'd begin; we find it too perpetuated for near twelve Centuries. But alas! the Author of the Memorial is not pleas'd with it; that's enough, it must be abolish'd.

THAT which the Author cannot do directly, he endeavours to do obliquely and indirectly. Not hoping to persuade the Church to change her Discipline, he is resolv'd to render that Discipline impracticable, and thus he goes about it.

AFTER having extoll'd the Excellence of the Sacrament, his Conclusion is, that no Attempt can be made upon its Indissolubility, unless forced thereto by Proof superior to all manner of Doubt; and then enumerating all the Sorts of Proofs, which the Canons have introduc'd, or Custom admitted, he finds none of them to his Satisfaction, or which affords that Certainty he requires. From thence he draws this Consequence, that if the Church might still lend an Ear to the Complaints of Impotency, it cou'd be for no other Purpose, but to cast off and reject such Complaints on account of the Insufficiency of the Proofs. An Argument which is plainly a prophane and irregular criticizing of the Conduct observ'd by the Church to this present Day.

HIS fundamental Principle therefore is founded upon the Excellence of Marriage, consider'd as a Sacrament; but 'tis this very Excellence which renders Complaints of Impotency necessary, and which consequently requires that the practical Part of it be reduc'd to such Means as are possible. The more venerable and august a Sacrament is, the more impious and sacrilegious is the Prophanation thereof by an
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Impotent ; and the more horrible this Prophanation is, the more Care ought to be taken, not to render impracticable the only Remedy that can put a Stop to it. And yet this is what the Author of the Memorial means to do, when he requires Proofs of a Nature, which are not to be found ; at the same Time that he extols the Dignity of the Sacrament, he endeavours to render its Prophanation irremediable.

THERE are in the Sacrament two Characters to be consider'd, its Indissolubility, and its Sanctity ; and we may say, that the first is only a Consequence of the Second. Now if Complaints of Impotency can put its Indissolubility to any Hazard, the Marriage of an Impotent inevitably sullies its Sanctity. Thus the very Interest of the Sacrament requires, that Complaints of Impotency may be reduc'd to a Point of Practicability ; and for this Reason the Church always avoided on these Occasions to put the Faithful upon an Impossibility.

IN vain do they go about to surprize us by that famous Passage of the Council of *Lateran*, *Tolerabilius est contra statuta hominum dimittere copulatos, quam contra statuta Dei dividere legitime conjunctos*, It is more tolerable to keep married Persons together against the Laws of Men, than to part them when lawfully married, against the Laws of God : For the Point in dispute now, is not a Conjunction had and obtained against a Human and Ecclesiastical Law, as was that the Council is speaking of, *contra statuta hominum*, against the Laws of Men. What we are upon, is a sacrilegious Union, such a one as is contrary to the Command of God and the Laws of Nature, consequently prohibited by the Divine Law. In the Case decided by the Council, the Divine Law was liable to be offended against, in taking one Course : And in taking another, there was only a Risk of violating a Law of the Church. The Council therefore finding the Danger less on one Side than t'other, prefers the

the last Course to the first. But in our Case the Divine Law is alike expos'd, take which Course we will; and as it wou'd be a Sufferer if the Marquis de Gesvres's Marriage shou'd be injudiciously broken, so will be no less a Sufferer, if it were injudiciously confirm'd. This shews that to apply in this Cause the Decision of the Council of *Lateran*, there must be an Alteration made in it which wou'd render it ridiculous, and make it perfect Nonsense. For thus must it then run, *Tolerabilius est contra statuta Dei dimittere copulatos; quam contra statuta Dei dividere legitime conjunctos.*

THUS, after all, what has been advanc'd on Behalf of Madam de Gesvres, is incontestable. The Judges, in Questions of Impotency, walk in a Path that has on each Side of it a Precipice equally terrible, Dissolution of a Sacrament on the one Hand, and its Prophanation on t'other. It were indeed to be wish'd that this Path was illuminated by the Light of the Sun. But if that's impossible, why shou'd People refuse the Torch which the Church presents? Why shou'd they reject the Proofs she authorizes by her Canons?

LET us go further, and see what Foundation the Marquis de Gesvres's Advocates have for pretending there's such Uncertainty in those Proofs. They can't as yet tell us, that Experience ought to warn us to distrust 'em: For, of ten thousand Judgments which may have been pass'd in the Course of the last Age, in Causes of Impotency, scarce can they tell us of two which Process of Time has caus'd to be suspected of Error. And yet at that Time they made use of a dangerous Proof, which the Church now sees it self happily deliver'd from. And whether that be so or no, it is certain there is no founding an Experience upon two Examples, fall'n out among ten thousand during the Space of a whole Age. But again, what Examples are they! The first is that of the *Sieur d'Ar-*

d'Argenton, who labour'd under an exterior Viriouness of Conformation: I say exterior, for it appear'd after he was dead, by the opening his Body, that Nature had deny'd him nothing of what she grants to other Men; but that she had only hid in him a Part of her Donatives. The second Example is that of the *Sieur de Langey*, who undid himself by imprudently challenging the Congress. Thus, in the first Example, 'twas Conformation caus'd the Error; and the Congress, in the second. But all this concludes nothing against Canonical Proofs, since the Canons never spoke of Conformation, or Congress.

FURTHERMORE; the *Sieur de Langey's* Example demonstrates how dangerous a Thing it is to depart from the Proofs establish'd by the Church. And indeed, the Inspection of the Wife which is a Canonical Proof, declar'd it self for the Truth. Dame *Langey's* Person was found to be in such a Condition as a marry'd Woman's shou'd be; and if the *Sieur Langey* had held to that Proof, he had infallibly carry'd his Cause; but out of an Excess of Confidence, he challeng'd his Wife to the Battel, and that was what ruin'd him.

IF therefore 'twere possible to draw any Consequence from that, it wou'd be no more than this; namely, that whatever Stress was heretofore to be laid on the Congress, the same, be it more or less, is now to be laid on Inspection of the Wife. Thus Experience is entirely for the Church's Proofs.

BUT perhaps our Adversaries will be inclin'd to battel the Proofs of the Church by Argumentation; and therefore I'll ask them, Have they a mind to be convinc'd by Argumentation, that the Rack is an Expedient hatch'd in Hell, and good for nothing but to save a strong-bon'd Rogue, to destroy an innocent Person of a tenderer Constitution? Nothing can be easier than to lay down such a Proposition: Nay, 'tis done to their Hand; for a certain Counsellor of the
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Parliament of Be'ancon, nor many Years ago, publish'd a Book, to prove the Uncertainty of the Rack, not only from Reason, and all possible Authorities, but likewise from an infinite Number of Experiments. Wou'd they have it prov'd to 'em by a thousand Arguments, that the Proof, by comparing Hand-Writings, is the most dangerous of all Proofs. We may convince them out of a little printed Tratt, wherein the Author fairly demonstrates, that nothing is more conjectural, nothing more destructive, than for Inquisitors to argue from the Strokes of a Pen. Wou'd they be convinc'd by Arguments, that the Rule of the Gospel, *in ore duorum vel trium testium stat omne verbum*, In the Mouth of two or three Witnesses shall every Word be established, (that Rule, I say, which is practis'd in all the Tribunals of Europe) is a Maxim which seems only invented to facilitate Calumny, to oppress Innocence? This too will be easy to do; a little Matter may serve to corrupt two Witnesses. In short, will they be convinc'd by Reason, that the Method of Proceeding in France against Criminals, is a Snare perpetually laid to catch the accused? This too is a Demonstration ready made out to their Hands, by Peter Ayrault in his Book entituled, *L'Instruction Judiciaire*. If therefore they will have no Proofs but what are absolutely demonstrative, Expositions superior to all Kind of Doubt, they must send far away the Rack, and the Proof by Comparison of Hand-writing, and the Testimonial Proof. They must likewise amend the Proceedings in criminal Causes, and establish a new Method which may leave to the Person accus'd the same Facilities of defending himself as his Accuser has to destroy him. Thus you see how far this Argument wou'd carry us. But if we consult Experience, we shall find that these Proofs which seem suspected to human Wit, have hardly ever hurt the Innocent, because Innocence has always found

found within it self, wherewithal to defend it self, and to make Truth speak in its Favour.

To apply this Ratiocination to the Proofs of Impotency. As the Order of the Secular Republick requires that there shou'd be some settled Methods of convicting Criminals; so the Order of the Ecclesiastick Republick requires that there shou'd be Ways conducting to the Discovery of Impotency. For the Marriage of an Impotent is no less offensive to Purity, which is the Soul of this latter Republick, than Crimes are contrary to Tranquillity, which is the Soul of the first. And as it wou'd be ridiculous to forbear punishing certain Crimes till Conviction was attain'd by Demonstration as clear as an Arithmetical Truth; so it wou'd be absurd to omit suppressing the Obscenities of an Impotent's nuptial Bed, till his Impotency were as clear to the Eyes of those who are to judge him, as it is to hers who complains of him. As on the other Side, it very rarely happens that the Innocent falls a Victim of the Uncertainty of the Proofs used in the Enquiry into Crimes; so it is almost impossible the Proofs establish'd for the Discovery of Impotency shou'd oppress a true Husband, a Husband who has to plead for him that Truth which the Canon *si quis acceperit*, calls, *veritas viri*. That Truth mention'd by *Justinian*, when he spoke of a Husband accus'd of Impotency, *et ille quia in veritate vir est, non ostendat*, And he shews not himself that he is in Truth a Man. In a Word, that Truth which puts out of Danger all who justly become Husbands. As they don't find it a hard Matter to make it speak for them, so neither do they find it a hard Matter to confound Imposture; and indeed Imposture seldom attempts such. If this has happen'd once or twice between Persons of Condition, 'tis a Sort of a Miracle, and Miracles are never drawn into Precedents.

THIS shews that the Proofs of Impotency derive their Strength from two Sources. They are at first convincing in themselves by the Relation they bear with the Truth that is sought after ; and afterwards their Conviction is compleated by the Husband's weak Arguments against them. So we may say, that if they were imperfect, the Husband, by not destroying them, gives them the last Degree of Perfection which they wanted : For in short every Man is sensible in himself what Course he would take , were he in the Marquis's Place ; and there's no body but would say, What ! shall I prove my self a Husband by Talk only ? Shall I call to my Aid the Artifices of Rhetorick rather than the Reality of Nature ?

IN order to shew the Forcibleness of this tacit Demonstration of Impotency, which is gather'd from the Actings of the Marquis de Gesvres, let us examine those of the Sieurs d'Argenton and de Langey, and compare the one with the other.

THE Sieurs d'Argenton and de Langey reported a thousand Secrecies of the Nuptial Bed. The Marquis de Gesvres can cite but one, which to return him in his own Language is a Lye so evident and so ill put together, that I dare say his Advocate with all his Gravity can't forbear laughing in his Sleeve at it.

THE Sieurs d'Argenton and de Langey were the first to challenge all possible *Eclaircissements* ; Inspection, Congress : 'Twas all one to them. The Marquis de Gesvres shuns nothing so much as *Eclaircissements* ; he's afraid of the Light.

THE Sieurs d'Argenton and de Langey shewed to the Searchers the Effects of a Capacity essential to a Husband, without which never any body was adjudged to be a Husband. The Marquis de Gesvres grants that he could not make appear to those who visited him ev'n the slightest Beginnings, the most imperfect Indications of such a Capacity, much less a compleat Token thereof.

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THE Sieurs *d'Argenton* and *de Langey*, who demanded that their Wives should be inspected, would not (doubtless) have hung back, if a second Inspection had been propos'd, upon their own Persons. The Marquis *de Gesvres*, on the contrary, declares plainly in his Memorial, that it would be in vain to visit him any more, and that they would never find any Change in him. Now does such Language leave any Doubts? And if to this Confession, which arises from all his Procedures, which likewise issues from his own Mouth, we add the Conviction which would result from a Canonical Proof, namely, the Inspection of Madam *de Gesvres*, will not the Judges *quatenus* Judges, & *quatenus* Men, equally espy the Truth? And can it be then said, they make a random Judgment of Impotency?

WHAT we have been saying shews in general, that Frigidity is not a Condition impenetrable to human Wit, and that the Conscience of the Judge may be secur'd by unsuspected Lights: Now proceed we to compare the two Proofs which each Party opposes to the other; the Wife's Virginity, and the Husband's Configuration. (I say *Configuration*, for we shall continue that Word, notwithstanding the grammatical Cavil of the Author of the Memorial: Not that we pretend to contest with him any Thing in Grammar: God forbid! But because, in supposing with him, that the Word *Configuration* suits none but Things inanimate, it is in its proper Place, when applied to the Marquis *de Gesvres*.)

BUT before we enter upon this Parallel, we must demolish a Paradox of the Author of the Memorial which may be called the Key of his whole System.

THIS Paradox is, that when Consummation has been contested between Husband and Wife, it has always been decided by the Husband's Affirmation without ever allowing the Wife to prove the contrary by her Virginity. This Proposition is diametrically

opposite to the Decretal *Proposuit*; for in short that Decretal, deciding between the Oath of the Husband and the Inspection of the Wife, gives it for the latter of these Proofs against the former, (if yet we may call 'a bare Oath a Proof) *videtur igitur nobis, quod testimonio septem Matronarum, qua illam per experientiam virginem asseverant, fides est potius adhibenda*, Our Resolution is, That the Testimony of seven Matrons, who affirm they found her a Virgin, shall rather be accepted.

WHAT does the Author of the Memorial do to deliver himself from the Authority of this Text? He feigns that the Decretal pronounces only between a Wife who has a Mind to make use of her Virginity as a Means to get her into a Convent, and a Husband who denies the Virginity purely to keep his Wife with him. So that, according to him, Impotency was not the Thing disputed in the Case of that Decretal; and from thence he draws this general Consequence, that the Inspection of the Wife was never us'd but in order to qualify the Party for a Nunnery, and not to dissolve the Marriage of an Impotent.

I WOULD know what Right he has to make Fictions? For the Decretal says nothing of Religion or a Nunnery. But to make Fictions against the very Words of the Text, is unsufferable. Did he not read these Words which the Decretal puts into the Wife's Mouth? *Se nec à viro cognitam, nec potuisse cognosci*, That she was neither known of her Husband, nor could be known of him. Or after he had read 'em, did he not comprehend that the Wife artickled two Things? her Virginity, *se nec à viro cognitam*; the Husband's Impotency, *nec potuisse cognosci*. Impotency therefore was the Point in Dispute between her and him. And if all the Business was to open to her an Access into a Cloyster, what Occasion had she to reflect upon her Husband, and to reproach him for his

his Impotency? Was not her Virginity enough for compassing the Design she had propos'd to her self? The Author therefore of the Memorial, in his Interpretation of that Text, abounded with something else besides Confidence. I leave it to others to call it by what Name they please.

BUT let us go further; let us grant him out of Complaisance, that the Case of Impotency is not clear in the Chapter *Proposuiſti*, what will he do with the Chapter *Littera*? Sure he won't deny Impotency to be the Question there: The Words of the Text are too plain, *Eo quod non haberet vir ejus potentiam coeundi*, because the Husband had not Power to consummate. Yet tho' Impotency was what alone made all the Difficulty, and tho' the Wife thought of nothing but how to get rid of a sham Husband, without aspiring after a Religious Life, the Judge had upon that Account ne'er the less recourse to the Inspection of the Wife, to enable himself to judge whether she was a Virgin or no. This is manifest from these Words in the Chapter, *Vos autem, ne id confiterentur in fraudem, à matronis bonæ opinionis, fide dignis, & expertis in opere nuptiali, prædictam fecistis inspicere mulierem, quæ ipsam retulerunt virginem adhuc permanere*: But you, to prevent Fraud in their Confession, caus'd the Wife to be inspected by Matrons of good Reputation, worthy to be credited, and expert in these Matters, who brought her in a Maid.

THIS then shews, that the Inspection served no less to determine Causes of Impotency, than to facilitate to the Wife an Entrance into a Cloyster.

AFTER this, who can enough admire, that the Author should go about to make us believe from his *Say-so*, that the Church trusted to the Wife's Inspection in one Case, and not in the other! That the Popes should err from the Paths of right Reason, (this is shocking to say, but we must say it,) that the Popes, I say, should so far err, as to fancy that
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a Wife's Virginity might be discoverable or not discoverable, according to the different Fruits which the Wife propos'd to her self from such Search; that it might be discoverable when the Point was to open a Door for the Wife into a Nunnery; that is, to facilitate to her a Work of Supererogation; and that it might not be discoverable, when the Point was to disengage her from an Impotent, that is, to bring her out of a State of Perdition.

If the Author had not read the Decretal *Litera*, he might be excus'd; but he had read it, for he cites it; and what is yet more strange, he no sooner cites it but he cries out, *In all this there's no mention of inspecting the Wife*. Shall a Text say, that in a Question of Impotency the Wife was inspected, and found to be a Virgin, and shall that Text be said not to mention Inspection?

It is however visible, that the Author has taken for a Foundation to his Illusion, two or three private Doctors, who after having given to the Decretal *Proposuit* the same Meaning that every Body else gives it; and after having explain'd it to mean Impotency, sling in by way of Guess these two or three Words, *Vel fortè intelligitur hac litera quando mulier vult ingredi Religionem*; or perhaps the meaning of the Letter is, that the Woman will take the Vail upon her. This was only propos'd as a Doubt, not to be built upon in any wise. And yet the Author of the Memorial lays hold of this Doubt; and what he finds advanc'd as a very uncertain Idea, under the Passport of a *vel fortè*, he makes a flagrant and indubitable Doctrine, and gives for manifest what he received as very doubtful and uncertain. To such a Bulk do little things grow when they pass through his Hands!

If therefore the Decision of the Decretal *Proposuit* turn'd upon a Question of Impotency, our Cause is decided. Human Subtilty cannot find the least Difference between our Case and that of that Law.

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What need is there then to look out for other Rules, and what Occasion to philosophize so very much?

To this Decretal is oppos'd the Authority of the Canon *Si quis acceperit*, fetch'd from the Decrees of an Assembly held at *Compeigne* in 757. These are the Terms of that Decree, as they are found in the Collection of Councils: *Si quis acceperit uxorem, & ipsa dixerit quod vir non manserit cum eâ, & vir dicit quod sic fecit, in veritate viri consistat, quia vir caput est mulieris. De muliere quæ dicit quod vir suus maritale debitum ei non reddidit, consensit Georgius.* If a Man marries a Wife, and she denies that he has lain with her, and he affirms that he has, the Man's Word shall carry it, because he is the Head of the Woman. *Georgius* understands it of a Woman, that complains her Husband don't render her due Benevolence.

It is manifest, that the Wife complain'd not of her Husband's Impotency, but only of his Contempt of her, *maritale debitum ei non reddiderat*, he did not render her due Benevolence: It was not want of Ability, but ill Humour she tax'd him with. She did not say, *non potuerat manere*, he could not lie with her, but that, *non mansisset cum eâ*, he did not: The Husband on his part answers the Complaint of his Wife, by affirming he had done his Duty. Upon this the Assembly decides, that the Husband's Oath must be abided by, because he's the Head of the Woman; a Reason which would have been ridiculous, if the Question had been about Impotency. Since an Impotent Husband can never be the Head in respect to a Wife; and therefore to give him that Title of Head, presupposes for certain that he was no Impotent.

It is then clear, that the Decree of the Assembly of *Compeigne* is a Stranger to Impotency. But let us leave to the Author of the Memorial the Liberty to explain it as he thinks fit: Suppose we grant him that it has been decided in the general Thesis, that the Husband's Oath ought to cut off Questions of

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Impotency; how will he reconcile that general Rule which was inserted in the Body of Canons, with another Rule no less general taught by Canon, *Quod autem*, taken from the 6th Book of the Capitularies? The Terms of this latter are these: *Vir & mulier si se conjunxerint, & dixerit postea mulier de viro quod coire non possit cum eâ, si possit probare quod verum sit per justum judicium, accipiat alium*. If when a Man and Woman are married, the Wife complains of the Husband's Impotency, and can make sufficient Proof of it, she may marry another.

ACCORDING to this last Rule, the Wife is admitted to prove the Impotency, provided her Proofs are juridical, and she has for her what the Canon calls *justum judicium*: *si poterit probare per justum judicium, accipiat alium*. If this be so, she is not tied down to the Husband's Affirmation; and in this Case, the General Rule of the Decision of *Compeigne* will, if understood of Impotency, suffer an Exception; since it will be no longer true to say, *in veritate viri consistit*, the Man's Word carries it, when the Wife is receiv'd and admitted to vacate her Husband's Affirmation by a contrary Proof.

WE must therefore, to reconcile the two Canons, stick to a Decision taught by all the Glosses, namely, that the Husband's Affirmation is decisive when the Wife is without Proofs; but when she has Proofs, her Proofs are decisive.

NOW, if any body should ask what Proofs she can bring, the Gloss of the same Canon, *Quod autem*, gives Answer in these Words, *Justum Judicium intelligit per aspectum corporis, si virgo est, quia aliud est in corruptâ*; sufficient Proof is made by Inspection of the Body, which differs in a Virgin, and she that is not so. If therefore the Wife is a Virgin, she may, according to that Canon, oppose her Virginity to the Oath of her Husband; and this is what is taught by above ten other Glosses; but because of the great

Number, we will select one or two of them that are most material.

UPON these Words of Chapter *Accepisti, de Frigidis*, which seem to defer the Judgment of the Question to the Husband's Oath; upon these Words, I say, *Tibi credendum est quia caput es Mulieris*, you are to be believ'd, because you are the Head of your Wife; the Gloss says, *Hoc intellige quando Mulier non probat se Virginem per aspectum corporis*, understand this of a Woman, who cannot prove her self a Maid by Inspection. Upon the like Words of Chapter *Continebatur*, which is not in the Case of Impotency, but which the Author of the Memorial does however cite, the same Gloss says, *Hoc intellige quando Mulier non probat se Virginem per aspectum corporis*: It is but reasonable, says it, that in case of Doubt the Question should be cleared up by the Husband's Oath; but to take from a Virgin Wife the Liberty of clearing up the Doubt by the Proof of her Virginity, this is far from the Intention of the Canons; *Hoc intellige quando Mulier non probat se Virginem*. And indeed it were ridiculous, that the Certainty of a Proof, which like that of Virginity falls within the Cognizance of the Senses, should be surmounted by the Oath of an interested Party.

NOW, if from the Gloss we pass to the Doctors and Canonists, what a Cloud of Authorities will they not furnish! We are again oblig'd to select some of them, and to refer to the several Passages themselves, because it would take up too much time to discourse of them with that Extent of which they are capable*.

* Sanches, lib. 7. Disp. 109. n. 6. *Secunda temperanda est Conclusio, nisi uxor per aspectum probat se non cognitam à viro, ut quia reperitur virgo à Matronis illam insipientibus, tunc enim potius creditur Uxori.*

THESE great Men, whose Names appear here, are the very Flower of Canonical Science; and we may

Uxori, neganti copulam, quam Viro affirmanti; and to prove his Proposition, he cites an infinite Number of Authorities.

Decius upon Chap. Proposuisti, compares the Proof resulting from the Affirmation of the Husband who swears he has consummated, with the Proof which results from the Virginity of the Wife; and he says that the latter bears away the Bell from the former, as being more certain. Tertio nota quod licet stetur juramento alicujus, hoc intelligitur nisi contrarium probetur; & probatio fortior prævalet, & illa quæ potentior est attenditur. No. 3. & 6.

Hostiensis in summa de Frig. Si autem Maritus asserat se cognovisse uxorem, Muliere contradicente & divortium petente, standum est Verbo Viri qui est caput Mulieris, nisi Mulier ipsum convincat de perjurio per aspectum corporis, sit enim probatio per inspectionem: Ergo si Mulier est corrupta, caveat cui nubat, quia standum est verbo Viri, nec corrupta poterit se Virginem ostendere, cum non sit.

Anchoranus upon Chap. Proposuisti. In Virginitate probanda testimonium Matronarum assertioni Viri præfertur, primo nota quod licet jus præsumat Mulierem cognitam à Viro, si cum eo permanfit; tamen contra dictam præsumptionem admittitur probatio in contrarium.

Egidius Bellemera in Cap. Propos. Testificatio Matronarum in virginitate probanda assertioni Viri præfertur.

Jean André upon Chap. Accepisti de Frig. Quod quamvis maritus neget (*that is*, neget se frigidum) non obstabit sua contradictio, si probari poterit contrarium, vel improbari ejus contradictio per aspectum corporis Mulieris.

may be bold to say, that we leave nothing uncited, when we cite at once *Innocentius, Hostiensis, Andreas, Panormitanus, Decius, Ancharanus, Bobicus, Bellemera, Zabarella, and Sanchez*. Most of these Authors have in fact been either Popes, or Officials, or Delegates, and not one of 'em that was not perfectly vers'd in the Practick of the Canons: So that when they concur, we may look upon their Writings as an excellent and compleat Body of the Church's Practice.

AFTER therefore so many learned Masters, in the Practice of the Church, have some of 'em declared, that in *probanda virginitate testimonium Matronarum assertioni viri præfertur*; in proving Virginity, the Matrons Verdict shall be taken before the Husband's Word: After others of 'em have told us, *Probatio per aspectum vincit omnes*; in short, after others have set the same Proof above any Proof whatever, by saying, there was none better according to the Canons, *non est melior probatio secundum Canones*: Who or

Panormitanus in Cap. Proposuisti. Testimonium Matronarum quæ Virginem per aspectum corporis asseverant, juramento Viri præfertur.

Hostiensis upon Chap. Proposuisti, speaking of the Proof arising from Virginity, and comparing it with the Oath of the Husband, says it is no wonder that the first surmounts the second, since probatio ad oculum aliam vincit.

And Innocent IV. upon the same Text, Non est melior probatio secundum Canones.

Henricus Bobicus, upon Chapter Continebatur, De Dispens. Impub. Probatio per aspectum corporis quoad cognitionem carnalem aliis præfertur; and when he uses this Expression, aspectum corporis, he means the Inspection of the Wife, since he refers to Chapter Proposuisti, wherein that sort of Visitation is all that is spoken of.

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what could give a Right to the Author of the *Memo-
rial* to tell us, pag. 41. of his Work, that *instead of
finding in the Doctors that the Inspection of the Wife is
admitted in Contradiction to the Husband's Affirmation;*
*on the contrary, they therein give all the Credit and all
the Belief to the Husband's Oath, and the Inspection of
the Wife is rejected as a frivolous, equivocal, and de-
ceitful Proof?*

IF it is an inexcusable Liberty to make Doctors
speak things hap-hazard, and without being autho-
riz'd by them, by what Name must we call the Au-
thor's Licentiousness, who attributes to 'em an irra-
tional Doctrine diametrically opposite to what they
have really taught? If a Choice were to be made, it
were certainly better to *divert the Publick*, than so to
mis-inform 'em.

THUS therefore we find the Inspection of the
Wife authoriz'd as a Proof of Impotency, by the
Laws and Constitutions of the Church. But this is
not all; 'tis certain those Constitutions and those
Laws approv'd thereof only because they found the
Usage of them establish'd. The Decretals, *Propo-
siti & Littera*, don't speak of it as a Practice newly
introduc'd: On the contrary, every thing therein
shews it to be a current Usage, and known in the
World before the Decretals themselves. And as we
find it in vogue in the Time of St. Cyprian, who made
use of it for the distinguishing real Virgins from
fictitious ones; it is reasonable to presume (till the
contrary be prov'd) that the Inspection of the Wife
is one kind of Proof which has pass'd from Age to
Age, by Tradition, from the first Age of the Church
to that of Greg. VIII. and Honorius III. the Authors
of the two Decretals; and from the Time of those
two Popes, it has been perpetuated unto our Days by
the same Canal of Tradition. Witness the Writings
of the Canonists fore-cited, and the Examples before
or after the Abolition of the Congress, and which

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have been produc'd on the Behalf of Madam de *Gesvres*, either in the Plea or Replication. When after this a formal demure Writer contradicting so many Proofs, (against his own Conscience) is so hardy as to say, that the Inspection of the Wife has *not the Beauty but Vice of Novelty*; Does such a Man deserve to be answer'd?

IN any other Affair it were enough to plead the Custom and Law, but in this it is not so; we must defend the Law, we must defend the Custom against the Insults of the Author of the *Memorial*.

HIS Objections against inspecting the Wife may be reduc'd to two. 1. 'Tis a Proof abolish'd with the Congress. 2. 'Tis a Proof uncertain in its Indication, uncertain in its Consequences. In its Indication, because Virginity cannot be indicated by certain Signs; in its Consequences, because the Husband's Impotency is no necessary Consequence from the Wife's Virginity; Conformity between Inspection and Congress; Uncertainty of the Proof resulting from Inspection: This is what is oppos'd to us, and we may say the first Objection is confounded in the second. For if you mind it, you'll find that the only Resemblance, fancy'd by the Author between the Congress and Inspection, is reduc'd to a pretended Uncertainty; that is to say, according to him, the Inspection is no less uncertain than the Congress, and so the first of those Proofs hangs on the other, at least by one Corner, *viz.* the Uncertainty common to 'em both. The Author's Idea goes yet further. For as he supposes all the Proofs of the Church to be alike uncertain, he from thence concludes, that the Congress being proscribed, implies the Proscription of all the other Proofs: Thereby he returns to his chief Aim, which is to maintain that the Church is without Proofs, when she goes about to detect Impotency; and therefore no Complaint of Impotency ought any longer to be listned to. But at present this is not the Point in hand:

hand: What is essential and certain is, that according to him the Decree that has banish'd the Congress, has likewise banish'd the Inspection by an Identity, or Parity of Reason, and this Reason is the Uncertainty.

It is reducing to Dust the Objection, to take away the Ambiguity of the Word Certainty or Uncertainty; by Favour of which the Author makes a Sport of the Inattention and Credulity of his Readers.

We must therefore observe, that there are two Sorts of Certainties; one that concludes from Necessity, from Infallibility, and this is what is sometimes call'd Physical Certainty, sometimes demonstrative Certainty; according as the Case is: the other, which concludes only from Probability, *ex probabili*; and this is call'd Moral Certainty. The first of these Certainties has for its Warrant, either the necessary Relation of an Effect with its Cause, and that is Physical Certainty; or a Concatenation of Consequences, which run back into an incontestable Principle, wherein they unite as in their Center, and this is Demonstrative or Geometrical Certainty: But the other Kind of Certainty, which is call'd Moral, has no other Warrant than Experience, which evinces to Reason, not that 'tis impossible, but very difficult, for the Idea, which offers it self to be false.

In all human Affairs, and especially in Enquiries into occult Facts, it is impossible to meet with either Physical Certainty, or Demonstrative Certainty, or indeed any Kind of Certainty, which concludes *ex necessario*; and for this reason we are oblig'd to take up with Moral Certainty, which only concludes *ex probabili*. To demand more, is to desire that Men may not be try'd; 'tis procuring Impunity to all Crimes; 'tis overturning Judiciary Order. Some Examples will illustrate this Thought.

A DEAD Body is found newly kill'd, and just by a Man with a Sword all bloody; another suspected of Theft, is seiz'd with the Goods upon him; and lastly, in the House of another accus'd of Coyning, are found the Instruments proper for the Exercise of that dangerous Trade: All this does not conclude necessarily, that those People are guilty. It is not impossible but the Man with the bloody Sword happen'd accidentally to pass by that Way, and that his Sword was stain'd with defending its Owner against some wild Beast. Neither is it impossible that some Enemy, nay, even the true Malefactor might convey the stolen things into the Pockets of the one; and into the House of the other, the Instruments above-mention'd. This has sometimes happen'd, as every body well knows: And yet tho' in these Cases Innocence is not a thing impossible, and consequently the Proofs conclude only *ex probabili*, the Judge does not make any Scruple to pass Sentence of Death upon such Probability.

AND without going farther, the Condormition of two Persons of different Sexes, if not marry'd, is not a Proof which physically and necessarily concludes for Adultery; but because it carries with it a vehement Probability, *certam*, as the Canons have it, *& violentam suspicionem*, there is no Judge that makes any Difficulty of giving Credit to it, and of holding the Adultery to be made plainly out, upon the Consequence which he draws from thence.

NOW, let us ask the Author of the Memorial, whether he requires the Proofs of Virginity to be certain, physically and infallibly certain, according to the Order of Nature, and the Concatenation of natural Causes? Or whether he would be satisfy'd, if they produce a moral and probable Certainty founded upon Experience?

IN the first place, we answer, that he demands an Impossibility, and such a sort of Certainty as our Courts know nothing of.

IN the second place, we do say, that the Proofs of Virginity are of a moral and probable Certainty, which has Experience for its Warrant, which is sufficient to satisfy the Conscience of the Court. And if he will be so bold as to deny that these Proofs have a moral Certainty, we ask him, Who shall be our Judge to decide the Question between us? Will he have the Official determine the Degree of Certainty, produc'd by the Tokens of Virginity? Wou'd he have him stain the Purity of his Priesthood, by dipping into such Filthiness?

THIS he must do, since he proposes, as a Means, the pretended Uncertainty of those Tokens; and since there is no judging of the Question, without judging of the Means. But let us grant, that this may be done without prophaning the Priesthood; nay, I will grant (tho' God forbid it should be so) that the Official's Capacity does extend to that length. Did ever any Judge set himself up a Judge of that Art? Did ever any Judge take upon him, to decide how far that Art might carry its Discoveries? If that were so, and if the Judges were competent in that Art, they would have no Occasion for Searchers: They would be Searchers themselves.

LET us here resume the Example of Comparison of Hand-writing; for nothing can better illustrate our Thought. Let a Forger of Hand-writing, who is convicted, or upon the Point of being so, from the Reports of Searchers upon a Comparison of Hands; let him, I say, take it in his Head to declaim against the Uncertainty of the Art; must the Judge needs lay aside all his other Business to turn Scholar to a Writing-Master? And yet there's no Help for it; he must go to School, if the Reasons of the Memorial had any Weight in them. For how could he judge of the Uncertainty of an Art, without he had study'd the Art?

WHAT is it then that dispences with him from studying that Art? It is this: Without examining whether the Art be certain, he relies upon the Honesty, Capacity, and Prudence of the Searchers. He supposes before-hand, that those Searchers will not return a certain Resolution upon Conjectures, which shall not at least have a moral and probable Certainty, such as the Art is capable of affording; and afterwards upon their Report, he passes a Judgment, which would be ne'er the less solid, even though the Art were uncertain, because there is no using an Art but as we find it.

LET therefore the Author of the Memorial know, if he pretends that in the Search after Virginitie, the Art of the Physicians, the Surgeons, and the Matrons is defective, he ought not to say it either to us, or to the Judges; because neither we nor the Judges are capable of knowing wherein the Certainty of the Art may be short and obnoxious. It is for the Searchers, after they are nam'd, that all these Speculations ought to be observ'd.

As for us, our Duty, as well as that of the Judge, is, to rely upon the Experience and Fidelity of such of the Searchers as shall visit *Madam de Gefures*, and judge of her Virginitie from the Condition of her Person. If they think their Art cannot afford them any thing but uncertain Lights, they will be so honest as to declare it: If on the contrary, with the Help of their Art, they discover any Uncertainty, they will take notice of it with the same Sincerity; and in either Case, the Conscience of the Judge will be secure.

HERE we may hold with Confidence, and not stir a Step farther: And yet because the World is fill'd with Clamours, and the Physick School with Disputes, concerning the pretended Uncertainty of the Proofs of Virginitie, we will not let the Question pass without taking some notice of it: But let them
not

not expect that we should call into Court a Troop of Physicians with hard Names, to listen to their Reasons, and afterwards to decide from them. The School of Physick, to which we are only the *prophanum Vulgus*, would take Offence at it: 'Twould be too great an Invasion of their Rights. We will confine our selves to one single Author, cited by both Parties, and consequently unexceptionable to both Sides. This Author is *Paul Zachias*, an Eminent Man, and so much the more to be valu'd in this Question, as he treats the Matter, not only like a Physician, but a Lawyer.

HE recapitulates in his Discourse, (in the first and second Questions of the fourth Book, Tit. 2.) that no body disputes that there are Tokens of Virginity; but that the Contest in the Schools of Physick, is concerning the Nature of the Certainty of those Tokens. Whether is it an infallible Certainty, as the Followers of *Pineius* pretend, or is it only a moral and conjectural Certainty, as others pretend? This is all the Difficulty, and this the Reason why *Zachias* does not form his first Conclusion by a general Negative of all sorts of Tokens, but by a Negative of their absolute Certainty, and of their Infallibility. He does not say, *Nulla dantur nota virginitatis*, there are no Signs of Virginity; but *Nulla dantur certa & inseparabiles virginitatis nota*, there are no certain and inseparable Signs of Virginity; where the Word *inseparabiles* stands for infallible, because an infallible Sign is inseparable from the thing signify'd, as Smoke is inseparable from Fire. Thus all that can be said, according to the Author, is, that the Assurance that may be drawn from the Tokens of Virginity, is not so strong as that which Fire gives us of Smoke, or Smoke of Fire.

BUT this does not hinder but that we may draw a moral Certainty from it, or an Assurance of evident Probability, which may be enough for the Judge in an obscure and difficult Point. THE

THE same Author, in the second Question, explains to us wherein consist the Tokens of Virginity. He enumerates six, and concludes his Argument thus, *viz.* That the Concurrence of these six Signs forms not only a bare Conjecture, but a manifest Conjecture of Virginity; and he adds, that upon this Conjecture a solid Judgment may be pass'd concerning the Integrity of a Virgin; that is to say, by the Concourse of the Signs to a certain Number, a Man may come at a Certainty, not physical, but moral, of the Secret he is diving into. *Itaque hac omnia signa simul conspirantia integra virginitatis evidentem conjecturam præbent: nam quod singula per se testari non possunt, simul unita poterunt. Quamobrem si illa ipsa quæ jam notavimus signa, & ea quæ infra notanda veniunt apparebunt, non inane de virginitatis incorruptabilitate judicium ferre licebit.*

NOW let them tell us, that Virginity cannot be prov'd but by Conjectures, it is true; but those Conjectures are evident, *evidentem conjecturam præbent.*

THIS only upon Conjectures of this Nature, that Mortgage Contracts are made void, when they bear the three Marks of Usury, Lowness of Price, Power of redeeming, and the retaining the Possession by the Seller. Each of these taken singly, is, strictly speaking, nothing; but when taken all together, they are a never erring Proof; and by this means, Certainty is made up of many Uncertainties.

THUS, according to *Zachias*, it fares with the Signs of Virginity, *quæ singula per se testari non possunt, simul unita poterunt.* One of those Signs is not enough; there must be a certain Number of them; in short, there must be enow of them to enlighten the Searcher; and this depends upon his Conscience and his Prudence.

LET us say therefore, that the Search after Virginity has nothing that distinguishes it from all other Searches after occult Facts; such as are, for Example,

ple, occult Crimes. The Proceedings are by way of Argumentation, by way of Presumption; and from what the Eye sees, Inferences are made for what it cannot see. Rays are gather'd from all Sides, and from these Rays assembled, a Light is form'd, which the Judge ought to be satisfy'd with, for two Reasons: First, Because it is impossible for him to fetch a Light elsewhere. Secondly, That even though the Light that is form'd from the Assemblage of Rays were imperfect, still must he decide in Favour of the Party who proves, tho' imperfectly, against the Party who proves nothing; especially when the Party that proves nothing, should have it very much in his Power to destroy the Proof that is set up against him, if the Truth be on his Side.

WE shall be after this told of Medicaments that restore lost Maidenheads; we shall be baited to Death with one *Carratola*, the Point of a Lancet, and a hundred other Tales; nay, the Jesuit *Commitolus* shall be impertinently rais'd up against us: But how can they make Use of the Examples of *Carratola* and a Lancet? Do not they apprehend that these Stories, were they true, would destroy the Proposition they would set up? For if the Medicament depriv'd *Carratola* of the Faculty, which Nature had form'd in her; if by the means of Astringents, another Woman becomes impenetrable to a Lancet's Point, why, a God's Name, are these Predigies? It is because Art can never imitate Nature perfectly; it goes always either too far or too short, and oftner the first than the last. Now if it is impossible for Art to imitate Nature perfectly, it is therefore impossible for it to deceive; for it only deceives so far forth as it imitates Nature.

THE Marquis de *Gesvres*, who perhaps is but too well acquainted with the Force of Astringents, would make believe that Madam de *Gesvres* is capable of making Use thereof. We forgive him this injurious Reflection, with a great many others.

BUT

BUT as for the Author of the Memorial, there is such a Meanness in his Marginal Note, Page , that surely the Publick will never pardon him; for can any thing be more boyish, than to argue thus? Madam de Gesvres has ascrib'd her Husband's Impotency to Astringents; therefore she knows the Use of Astringents; therefore she is capable of making Use of them, in order to appear like a Virgin. In truth, as throughout this Memorial, 'tis difficult to know the Author otherwise than by the Style, so here it would be absolutely impossible to know him.

As for the Jesuit *Commitolus*, the Author makes a Partisan of him, only because he turns into a Decision what the Jesuit offers as an Objection. The Words quoted by the Author of the Memorial are indeed in his Book, but they are only in the Course of the Argumentation; for as to the Decision, it runs thus: *Sed tamen à communi sententiâ recedendum non est, cum puella virginitas sine ejus crimine & infamiâ explorari potest*; but yet we must not depart from the common Opinion, since a Woman's Virginity may be examin'd without any Crime or Reproach to her. Terms which shew that that Author held for certain, both that Virginity could be discover'd, *potest explorari*; and that that was the common Opinion from whence there was no departing, *à communi sententiâ non est recedendum*. We shall say nothing of another Casuist, nam'd *Basilus Pontius*, whose Book we have not by us; but we will take upon us to say, that to be able to judge of the Degree of Certainty produc'd by visiting the Wife in Questions of Impotency, a Man must be something more than a Casuist.

IT is therefore now prov'd, that Inspection may afford an Indication of Virginity, if not physically, at least morally certain. It remains to see, whether a prov'd Virginity gives a Right to conclude Impotency; and this shall soon be dispatch'd.

IT is certain, that to judge from Experience and the ordinary Course of Nature, every Husband whose Wife is still a Virgin, after having cohabited with her a considerable Time, is either an Angel or an Impotent. But as Impotents are not so rare as Angels, it would be ridiculous, when a Virginity is juridically evidenc'd, to seek for the Cause of it any where but in Impotency.

AND if the Advocate of the other Side pleads, That 'tis not however impossible but a Man, who is really a Man, may impose Continence on himself, in Company with a lawful Spouse; if it is added, that it is not incompatible even with *Condormition*; that Contempt, Odd-humour'dness, Interest, and a thousand other Causes, may induce a Husband to withdraw himself from the Conjugal Duty; that there are Examples of such, and that if we are to believe *Geoffry of Vendome*, the Founder of a certain Religious Order, did much greater Miracles; if, I say, they set against us all these Reasons, the Answer will be, that indeed such Examples are so many Miracles, but that Miracles are not wrought every Day; and that even tho' they were possible, their Possibility would not shake the Solidity of a moral Demonstration.

WOULD, after all, any thing in the World be certain, if, in order to try Men, there must needs be such a Certainty as that the contrary should be physically impossible? It is not physically impossible, but the Contract which bears the three Marks of Usury, may be guiltless of Usury; it is not physically impossible, but he who is found with a bloody Sword near the Body of a Man newly kill'd, may yet be innocent of the Murther; and so in the other Examples before-mention'd, there is a physical Possibility, that he who is accus'd of Theft, may however be innocent, tho' the Thing stolen be in his Pocket; and likewise, that he who is taken up for Coining, may be innocent of that Crime, tho' the Instruments be found

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in his House. All this is physically possible; but the Law does not stop at every physical Possibility, because its End is not Physicks but Morals.

FOR the same Reason, we say, that if it is physically possible for the Husband to be a perfect Man, and yet the Wife a Virgin, 'tis enough for our Purpose, that the Concurrence of those two Things, Potency in the Husband, and Virginity in the Wife, is morally impossible.

IN a word, it is enough for us, that it is contrary to the ordinary Course of Nature, which alone can supply the Judge with Presumptions for judging of what cannot come within the Senses. And this is the Reason why Virginity furnishes a convincing Argument of Impotency; nay, we may say the only convincing one. And therefore *Innocent IV.* speaking of inspecting the Wife, did not stick to affirm, that it was, according to the Canons, the surest of all Proofs, *non est melior probatio secundum Canones.*

LET us therefore abide by our Canons, since we have no other Rules. The Libertinism of Reasoning, which is the epidemical Distemper of secular Doctors, is uneasy, and can't bear the Yoke of those Rules, because Man's proud Spirit cares not to be govern'd; but what will be the Event, if we transgress the Bounds which our ancient Fathers have set us? The same that was in the Days of our Forefathers*; when the first Heresiarch of the latter Times submitted Scripture to the Criticism of the People. Every one abounding in his own Sense, took upon him to be Judge of the Divine Word, and from thence sprang up so many Sects, that Vermin, which at this Day gnaw the Coat that is seamless.

* *Noli transgredi terminos, quos posuerunt patres antiqui.*

IN like manner, if People bear with the audacious Liberty assum'd by the Author of the Memorial, of making himself a Judge both of Discipline, and of the Canons of the Church, every Man will frame his own Rules, every Man will constitute himself Head of a Party; as many Canonists, so many particular Sects, who will tear to Pieces the Doctrine, and at length reduce it to Ashes, which will make it be blown away by every Wind; and thus the Judges will be like the Dove out of the Ark, which had no Place where to rest her Foot.

CAN one, after this, believe that the August Parliament, which exterminated the Congress, meant with the same Stroke to cut the Throat of the Canons, and of all the Canonical Proofs? What a Notion! What Extravagance!

THE Congress was a Monster, which was newly usher'd into the World without Law, without Title, and without any Passport at all. Inspection of the Wife is a Proof of almost equal Antiquity with the Church, consecrated by a Law of the Church, and authoriz'd by the perpetual Usage of the Church, so perpetual, that it has pierc'd thro' an Abyss of Time to come down to us.

THE Congress was abolish'd, because it had led the Judges into Error in the Business of the *Sieur de Langey*. The Inspection of the Wife was so far from doing so, that its sole Business was to set the Judges right. The Congress was dangerous, because its Success depended upon the uncertain Motions of Nature, and was not repeated without Difficulty; so that one untoward Quarter of an Hour decided the State of a Man. On the contrary, Visitation is nothing but the Inspection of a real and local State, which is ever the same, and subject to no Vicissitude. Again, the Congress depended upon the Concurrence of two adverse Parties, one whereof (the Wife) might easily supplant the other, as *Tagareau* frequently

ly observes. Whereas the Visitation requires of the Wife no more than a little Patience, which she will gladly lend as a Ransom for her Modesty. If after this, there's any Indecency in the Visitation, is it any thing like the Infamy, the Turpitude of the Congress? A mad Man may say it, a furious *Declaimer* may put these two things in Parallel; but a wise Man will not suffer himself to be so far transported. Amidst all those Characteristicks, which so essentially distinguish the Inspection from the Congress, how can any body confound them? How suppose them involv'd in one and the same Condemnation? Does the Decree of *Langey* mention the Inspection of the Wife? Are not the Terms thereof confin'd to the simple Abolition of the Congress? Is there any general Expression, which accepts of the other Proofs of the Church, and which rejects the Usage of the Visitation? Nay, since the Congress has been abolish'd, has the Inspection been laid aside? Has, it not been prov'd from the Examples at *Paris, Rennes, Aix, and Langres*? What Warrant then has the Author of the Memorial to tell us, that the Visitation and the Congress have one and the same Fate? Because, says he, *Ubi eadem ratio, idem jus*, Where there's the same Reason, there's the same Law. Thus with a pitiful Excerpt out of a Common-place Book, he thinks to impose upon us. But after the differencing Characteristicks which we just now mention'd, his Identity of Reason becomes a Chimera. And tho' that were not so, can he have forgot that the doughty Maxim, *Ubi eadem ratio, idem jus*, never takes place but in Matters subjected to Reasoning? But in such as depend upon a positive Law, as is a Decree of Regulation, it is not said, *Ubi eadem ratio, idem jus*; on the contrary, it is said, *Ubi Lex non distinguit, nec nos distinguere debemus*, Where the Law distinguishes not, we ought not to distinguish; or, *Quod Lex omisit, & nos pro omisso habere debemus*, What the Law has omitted, we ought not to take notice

notice of. But I take too much pains to baffle an Imagination so irrational; an Imagination whose Author cannot any other way excuse himself for making Use of, than by the Rule, *Necessity has no Law*.

Now, after having evinc'd from the Authority of Antiquity, from the Canons, from constant Practice, from the Certainty as well of Indication as Consequence, the Regularity and Conclusiveness of the Proof resulting from the Inspection which we demand, we shall proceed to that other Proof of a new Invention, which the Author of the Memorial, by a Strain of Genius, exalts above all others; I mean the Conformation; and I call it Conformation, because I speak of it in the general Thesis, without Application to the Marquis de Gesvres.

THE Difference between this first Part which we have done with, and the second which we are entering upon, is this; In the first, the Author has only copy'd the old Declamations, which the Tribe of Impotents have perpetually made Use of, tho' in vain, against the Inspection of the Wife. But in the second, he borrows nothing from any Body; 'tis all his own, and may be truly call'd an Original. Is Conformation alone decisive for the Husband? This is our Question, upon which I would first and foremost ask him, Whether it ever was decisive? For if it never was decisive till to Day, we have great Reason to distrust this Principle of Decision. We are not unduly sensible, that he alledges six Examples; but we have already confuted those six Examples, and shall yet farther confound them before we have done.

If we ask *Justinian* how Impotency is to be discover'd, he will answer, that *the Husband must show himself a Man*. But does he require no more than the bare Exhibition of the Figure? 'Twere ridiculous to think so, since he requir'd a Cohabitation of two Years, and therefore necessarily suppos'd the Figure

Figure to be compleat. Now, if notwithstanding this Figure was compleat, he would have the Husband shew himself a Man, it follows, that he repos'd no Trust in the Figure. And what that Proof of Manhood was which he requir'd, may be more easily guess'd at than express'd.

IF, in the next place, we consult the Decretals, which are properly our Laws in this Matter, we shall find there's not a Word about visiting the Husband, nor consequently about his Conformation. Nay, the very Glosses say nothing of it; and the Author of the Memorial, who would insinuate that they do speak thereof, cannot find the least Warrant to bear him out in his Idea. Thus the Laws and Constitutions of the Church have made so little Account of a Man's Conformation, that they did not so much as think the Judge ought to take any Notice of it. I will not say, that latter Times did unwisely in taking Cognizance of it; but this still shows, that it was not natural to search in Man for the Proof of his Ability, since the Legislators of the Church search'd not for it there.

THE ancientest Canonist, (as 'tis believ'd) that has spoken of visiting the Man, is *Hostiensis*. But how does he speak of it? These are his Words, in *Sum. Tit. de Frig. n. 13. Et ideo Judex debet diligenter inquirere utrum vir moveatur ad coitum, vel non*; and therefore the Judge ought to make a strict Enquiry, whether the Man has any Incitation or not. A Man that talks thus, is doubtless very far from thinking that bare Conformation is sufficient.

ANOTHER Canonist, *Præpositus*, cited by *Tagareau*, Pag. 109. expresses the Cases wherein the Triennial Cohabitation takes place; and to give it place, he desires that the Husband should (when visited) shew that Token of Virility and Potency, which did not appear in the *Marquis de Gesvres*: *Tunc (says he) habet locum Cohabitatio triennalis, quando nullum apparet*
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Impotentia signum, ut quando vir habet lanceam rectam & aptam.

IF to keep himself from being suspected of Impotency, a Man must be seen in that State which this Canonist so naturally describes, it follows, that not being in that State is a *signum Impotentia*; and then, if inaninate Conformation is a Sign of any thing, it is of Impotency rather than Potency.

* THEY who have read *Tagareau*, know, that he makes the chief and most essential Mark of a Husband

* P. 25. We shall therefore hold to it, that to declare a Man Potent, he must have Motion, &c. P. 39. The Difficulty is the greater, when the Man is without any apparent Defect, & *frigidè moveretur & arrigit*, (observe, he supposes in this Man some Motion: and yet because he at the same time supposes this Motion to be weak and slight, he puts him in the Class of Impotents) which is a kind of occult Frigidity, from which however something will appear in Visitation, provoking to Motion. (This shews the Practice of Provocation was before to Day.) P. 44. But if the Man is found without Default, having on the contrary all the Tokens of Virility, and Motion likewise, which may be discover'd in visiting him, he is not Impotent. (Motion therefore has been look'd for in visiting a Man, and bare Conformation was never acquiesc'd in.) P. 91. This you must read in the Original; for it is so very smutty, it wou'd foul the cleanest Language it could be wrapt up in. P. 103. (Speaking of one who is suppos'd fit for none but a Widow,) something may be perceiv'd in visiting him, and observing whether he can move; it being certain, that he who has Motion sufficient ad copulam, without any other Defect, is Potent. (Therefore no Body can be adjudg'd Potent, if that Motion appears not in him.) P. 109, and 110. Hostiensis says, there are Men qui tardè moventur & arrigunt,

band to consist not in bare Conformation. All his Passages are plain and explicite: We shall produce some of them, but shall change here and there his Terms, because they were too broad.

* HOTMAN, another Author who wrote of Impotency in the last Age, and who propos'd to himself the same Object with Tagareau; that is, to procure

gunt, and that the Judge in hujusmodi causis debet inquirere diligenter utrum Vir moveatur ad Coitum, thereby knowing whether he's Potent or not; (it is therefore by Motion, and not simple Conformation, that Potency or Impotency is discover'd by.) P. 3. It will be enough to say, that Motion sufficient ad copulam, being an infallible Sign of Potency in a Man, who has no other visible Defect, all lawful Endeavours ought to be us'd to discover, (out of the Congress) utrum Viri moveantur ad copulam & arrigerent, because thereby their Potency or Impotency may be known. See again the Original, p. 118, and 204. Let the Physicians and Surgeons, who shall visit the Man, be enjoin'd (the Author in this Place is instructing the Judges how to conduct themselves) to observe whether he has all the apparent Tokens of Manhood, whether any thing be wanting in him; also, whether he can move or not, Motion being an infallible Token of Potency in him who has no visible Defect, let People say what they will. The Duty then of Searchers, is to judge Man not by Conformation, but Motion.

* Hotman, p. 11. Every Man ought undoubtedly to be reckon'd an Impotent, cujus pudendum non potest arrigere, who has no Erection; but it's hard to know whether that's sufficient, and whether a Man shall be judg'd Potent, ex eo quod habet hujusmodi organum plenum, nervosum, erigibile, & mensurâ communi non destitutum. (This Author speaks like our Searchers; he doubts whether Motion be enough, but he does not doubt

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entire the Repeal of the Congress: This *Hotman* follows exactly the same Principles, as will appear by the underwritten Quotations.

THESE

whether Conformation be insufficient.) P. 18. We therefore hold it for certain, that Motion is not enough to cause a Man to be declar'd Potent, but there's something more requir'd. (If Motion is not enough, can Conformation without Motion suffice?) P. 23. The common Signs of Potency are a Voice not small nor Womanish, a Wit not dull nor heavy, and the Hair too must grow out naturally as in others. — But the greatest Sign of all is Motion, the most conclusive, the most necessary, and that which surmounts all others. P. 27. Holding for an assur'd Maxim, that he is capable of Marriage who has Motion. (So that to judge whether a Man is capable of Marriage, we must examine whether he is capable of Motion; and that being so, then inanimate Conformation is not sufficient.) P. 32. A Man can't be separated, tho' his Wife's a Virgin, dummodo præcipuum organum sit integrum & tensum. P. 39. The second Consideration which ought to be had in visiting the Man, is to pray the Judge to direct the Physicians and Surgeons how they are to form their Report, — &c. — And if they find that there has been no Excision, nor any Privation of the Organs, (that is, if the Conformation be entire) they may, by some Method which their Art may suggest to them, see utrum in præcipuo organo sit aliquid roris, & arrigat. And 'twas for this Reason that we said in the Replication, that the Searchers had Secrets for discovering whether the Man they visit is capable of Motion. (The Author of the Memorial, who is scandaliz'd at this Proposition, ought to have known, that the Advocate of *Madam de Gelyvres* only spoke after *Hotman*, one of the greatest Scholars of his Time.) P. 48. The Husband, who is able to make his Potency appear, is not oblig'd to make

THESE two Authors have indeed spoken of Impotency like Canonists; but have they who have spoken of it like Physicians, held other Principles? Shall I here repeat that Expression of Zachias, which so formally condemns Conformation, *Membri optimè conformati flacciditas*, when the Part is very well form'd, but weak? Shall I likewise recal a general Maxim, which is in a Report of Searchers, handed down to us in the 14th Decision of the *Rota*? The Husband, who gave Occasion to this Report, was form'd just as the Marquis de Gevres is; and therefore the Visitation which was had upon his Person, was follow'd by just such a Report as ours, *Medici retulerunt se in eo reperisse partes genitales naturaliter bene dispositas, ideòque difficile, imò impossibile esse, ex solâ partium Veneri dicatarum inspectione, de potentiâ vel impotentiâ Viri judicium ferre*: The Physicians reported, they found the Parts design'd for Generation, well made; but that it was difficult, nay impossible, by a bare Inspection of those Parts, to judge of the Potency or Impotency of a Man.

make any other Proof, than that actually rem habuerit cum Uxore. (Observe, according to this Author, the Husband who goes about to hinder his Wife from being examin'd whether she's a Virgin, is oblig'd to prove that he is Potent. Thus when he refuses to make out his Potency, he ought to suffer his Wife to be inspected.) P. 85. Such a Man (he's speaking of a Man charg'd with Impotency) must not flatter himself, and think to avoid Process, because he has a good Aspect; for if the Physicians do not see in his Person great Arguments of Potency, and if the Wife is found to be a Virgin upon a Report of Matrons, the Marriage ought to be declar'd null; and those Arguments of Potency, ought not only to be in insurrectione organi, but they must also see the Disposition of Body, &c.

ALL the other Reports which have been cited for *Madam de Gesvres*, either in the Plea, or in the Replication, have follow'd this same Principle; and it was for the Inability of compleat Conformation, that the Officials untied the Marriage-Knots of *Jacob, Hubineau, Cohu, Legros, Mercier, Verdun*, and others.

So that when the Author of the Memorial offers us Conformation as a sure Warrant of Potency, he at the same time tells us, that those Sentences, which were all, except one, subsequent to the Repeal of the Congress, are so many sacrilegious Impertinencies. And indeed there's not so much as one of 'em, that does not deem as convicted of Impotency, *Husbands* whose Conformation was exact, nay, Men who gave such Appearances of Virility, as the *Marquis de Gesvres* could not give.

THIS is not all; the Author of the Memorial must go farther, and tell us, that since the Discovery of his Principle, the Art of the Searchers is no longer necessary in Questions of Impotency; for every Body sees, that if the Inspection of a Man is for no other End, but to be inform'd as to Number and Dimensions, there's no Person but may be a Searcher.

AND so we may say to the Searchers of our Time, what *Tagareau* said to those of his, who abstain'd from judging of the Potency of a conform'd Man, and who suspended their Judgments till the Congress; *Your Science is not great, if you can't judge of Impotency, unless there's an apparent Privation, or a Want of Organs. Any Person can do as much as that.*

STICK we therefore to the Rule. Never was any Man that was accus'd of Impotency, declar'd a true Husband, upon the Credit of Conformation; conform'd Men, as well as others, have been forc'd to part with their Wives upon the Exploration which they have subjected their own Persons to, or which their Wives have undergone.

NAY, some of them, such as the *Sieurs Verdan* and *Jacob*, upon both one and t'other Proof; *Hubi-
bineau* and *Mercier* were declar'd Impotent upon visi-
ting their Wives; *Cabu* and *Legros*, upon the bad
Success of the Attempts which they made upon
themselves, or which the Searchers made for them.

AFTER this, who will not wonder at the Author
of the Memorial, when he observes, that the Wives
of *Cabu* and *Legros* were not inspected? Has he then
forgot the Petition of *Cabu's* Wife transcrib'd into
the Book of the *Sieur de Combes*, where 'tis visible,
that the Conformation of that Husband was put to
the Test? Has he likewise lost the Remembrance of
what he has read in the *Journal du Palais*, where the
Journalist says, that *Legros* was sound'd the same
way? If the *Marquis de Gesvres* is willing to abide
by that Touch-stone, if he will come into the same
Trial, *Madam de Gesvres* is not against it. But, at
the same time that he refuses to have his Person try'd
any Way, and declares that reiterated Trials would
be in vain; for him to hinder the Truth from being
sought for in the Person of *Madam de Gesvres*, is
what has no Precedent or Example: And those he
shelters himself with, do conclude nothing in his
Favour. But to judge thereof, we must hear what
he says.

The Physicians, says he, and the Chirurgeons of great-
est Note, who have made Inspections and Reports in this
Officialty, since the Repeal of the Congress, have plainly
given to understand in their Reports, that since the fore-
said Repeal they had no longer any other Tokens to ex-
amine, or other Proofs to look for, than good or bad Con-
formation. Some of those sage Searchers have been
vertuous as to declare in their Reports, that since the
Condemnation of the Congress, it was the only thing they
could lawfully examine. Others of them, without re-
peating the same Reason, have given Marks of the same
Submission to that Ordinance, by confining themselves in
their

their Reports to the sole Examen of good or bad Conformation. Upon this single Proof without carrying their Curiosity farther, they have determin'd whether a Man was Impotent or not. And 'tis seen by many Precedents, that the Officials did not require other Proofs to pronounce their Decision. — In none of the Reports or Judgments, do we find eieher the Searchers proposing to inspect the Wives, or the Officials ordering it.

WE here solemnly declare in the Face of the Publick, that we will give up the Cause, if in any of the Reports which the Author cites in this Place, can be found those Words which the Memorial sets down in an *Italick Letter*, Since the Condemnation of the Congress, Conformation is the only Thing that is lawful to examine. We speak with Confidence, because we are sure of the Truth.

THE Words which the Author transcribes, relate to a Report made in 1675, before the Abolition of the Congress. Therefore if it were true, that the *Age Searchers* had talk'd the Language which the Author attributes to them; if they had said, that since the Condemnation of the Congress they were Judges of nothing but Conformation, they had been either Impostors, in allowing the Congress to have been already condemn'd when it was not, or Enthusiasts, who by a rapturous Fit could have foreseen what was to happen.

BUT then what does their Discourse amount to? Even this, and no more. After they had found a good and laudable Conformation in the Person whom they examine, they declare that it was not lawful for them now, that is to say, before the Act of the Congress, to judge from any other Tokens whether the Party was Potent or Impotent. And this Word now has a Relation to the Custom observ'd by *Tage*. For that Author remarks, that during the Time that the Congress was in Force, the Searchers acquitted themselves very lightly in their visiting of

the Man, in whom they hardly examin'd any thing more but Conformation, presupposing that the Congress which was to follow, would make it sufficiently apparent, whether that Conformation was capable of making good what it seem'd to promise. Now, let any one judge what Confidence ought to be reposed in the Quotations of the Memorial. Whether it be Mistake or Negligence, it is certain there is scarce any one of them but is perverted by some Alteration, or some other Sort of Abuse.

If we were to take the Author of the Memorial's Word for't, we should believe that the other Searchers whom he speaks of, did look upon the Decree which repeal'd the Congress, as a Law which limited their Attention to the sole Examination of Conformation. And yet there's nothing in their Reports which gives any Colour for ascribing this Thought to them; nor can they be supposed capable thereof without supposing at the same time, that they had as much Wit as the Author of the Memorial: A Thing which will not easily be believ'd.

THIS is true and certain, *viz.* that the Conformations for which those Searchers did decide, were either in a Condition or Disposition which promis'd Potency. If they have render'd no Account thereof in their Reports, it is because they did not think it became them to defile the said Reports with a Detour equally offensive and superfluous. Why superfluous? Because it was their Opinion which the Judge demands of them, and not the Methods which they made use of to arrive at the Knowledge of the Truth, which they render an Account of; Methods which they may take, without being authoriz'd thereto by the Judges express Order, just as a Master Mason, nominated to give his Opinion of the Foundation of a House, is not oblig'd to have in the Sentence which nominates him, an express Permission to open the Earth, and to lay bare the Foundation, the Solidity whereof he is to certify.

IT is therefore true to say, that these Reports which they make so much Noise about, do conclude nothing. But we may say more; they would conclude nothing, tho' it were certain that Conformation alone, without other Circumstances, had weigh'd with the Searchers: For one Man's Conformation, is not another Man's. There are some Conformations which can of themselves remove all Suspicion of Impotency; and this depends upon the Quality of the Person whom the Searcher examines. And as it would be ridiculous to argue from one Man to another, the Author of the Memorial cannot lawfully prove the Potency of the Marquis de Gesvres by such Reports of Visitors, wherein he had nothing to do. This shews, that the wisest Course on these Occasions, is, to leave Things to the Prudence and the Conscience of the Searchers. This likewise shews, that it is rash to tell them that they ought to follow one Rule more than another; for this is properly taking upon us to be Judges of the Rules of Art. Which argues an inexcusable Presumption in Persons, who can know but very little of the Art.

LET us carry this Argument farther, and with one more Consideration shut up this Dissertation, which indeed does not seem to be very necessary, since it degenerates into a Criticism of the Art. Were it true, what the Author of the Memorial pretends, that Conformation had decided in the Cases of the six Reports which he mentions, we must have look'd for the Cause of it no where but in the Impossibility of getting an Insight into the Husband's Impotency, by visiting the Wives. We have already observ'd in the Replication, and have shewn by the Interrogatories of those Wives, that not one of them pretended her self a Virgin. And it was for this Reason, (common to all of them alike) why neither the Searchers propos'd, nor the Judge order'd any of them to be visited. But because that Proof has not been made

Use of upon five or six Occasions, where it could not be apply'd, does it follow, that in this Affair, wherein it offers it self a decisive and canonical Proof, it is the Judge's Duty to reject it?

AND because those Wives, who were spoken of in those Reports, have been either so foolish as to have suffer'd the Loss of, or so unfortunate, as not to have preserv'd their Virginity, must Madam de Gesvres be incapable to prove her's, and so lose the Fruit of her Virtue?

LET us leave here the Reports, and return to the Rules, which the Church teaches us by its Constitutions.

So little did she value Conformation, her Laws and Regulations don't so much as speak of it. Nay, we farther say, she was so very distrustful of Conformation, that all the Rules and Proofs she could think of in Cases of Impotency, had no other Aim but to enable her Ministers to avoid being impos'd upon by Conformation. Therefore when the Advocate of the other Side gives us Conformation for a Proof, 'tis the same thing as turning the Question it self into a Proof; or, to render this Thought more perceptible by an Example, 'tis the same thing as if one who is accus'd of having counterfeited a Deed, should argue from the Authority of that very Deed which the Plaintiff says is forg'd.

THE Plaintiff, or, which is the same thing, the Party who undertakes to prove a Deed false, would talk to the Defendant thus: You would have your Deed be admitted in Evidence, because there's the Names of two Notaries to it: But first make it appear, that those Notaries did write with their own Hand the Names and Flourishes which are to that Deed; or else, if you cannot make appear that all this is true, let me shew that it is all false and counterfeit; and till I do so, let the Credit of your Instrument remain in Suspence, and do not make Use

of it against me. And exactly thus does Madam de Gesures talk to the Marquis. *Your Configuration is impeach'd of Falsity; I alledge it to be a Fiction and a Cheat: If I'm cast, I'll be bound to forfeit all I'm worth in the World: Such a Penalty is heavy enough to give Weight to my Accusation, and to make it be presum'd to be well-grounded. Do you therefore begin, and yield up your Person in order to verify this Matter; or, if you mean to with-hold from me this Proof which resides in your Person, let me demonstrate by my own Person how just and how well-grounded my Accusation is. But 'till then, do not insist upon making this Configuration (which I object against) to serve as a Proof; this Configuration, I say, the Fidelity or Infidelity whereof is disputed between us.*

I MUCH doubt, whether the Author of the Memorial can get off of this Argument. He may call it Subtilty and Sophistry; (for that's his Way of bringing himself off, when he finds himself hard put to it;) but assur'd I am, he will never find any essential Difference between his Pretension, and that of the Plaintiff we have been speaking of.

WE have seen him spread forth six Examples, and apply them to a clean contrary Meaning, in order to introduce into the World an Error of which he is the Father and Inventor. Now, let us see the Ornaments which he bestows on this Error to cover the Deformity of it. His Words are these:

The Conformation of any Person is such a Proof as is founded in the very Order of Nature. A Child is born with all the Parts of a well organiz'd Body. Nature who animates all those Parts, destines them to the several Functions that are suitable to them; and all those Parts so born together, do likewise undergo together their Increase and Decrease: In Youth they grow up together, in Manhood they are at a stand together, in old Age they wear away together; it cannot therefore be thought, without affronting the Wisdom of Nature, that having

form'd all these living Parts, at the same time with Proportion, Consistence, and Disposition, necessary for their several appointed Offices ; I say, it cannot be thought but that she, at the same time, has given to all of them the Sustenance and Strength requisite for their fulfilling the Ends and Purposes to which she has allotted them.

I DARE say, no Body will accuse us of picking out the least shining Part of the Memorial. And yet what do we see in all this ? An Orator playing the Wanton, a Rhetorician drawing Pictures to amuse his Fancy. To prove this, is it not plain, that the Quin-essence of all these Phrases amounts to no more than this Proposition, *viz.* that all who are of Opinion, that Conformation is insufficient in Questions of Impotency, blaspheme against the *Wisdom of Nature* ?

THUS the Author of the Memorial will have it, that the Wisdom of the Church is nothing, nor that of the Canons any thing. There's nothing in the Canons but *Contradiction*, in the Rules of the Church *Instability*, in the Proofs *Uncertainty*, in her Discipline nothing but *Impurity* and *Complaisance* for the Frailties of the Sex : But as for Nature, there it is that the supreme and perfect Wisdom resides. Not but that Nature goes often out of the right Way ; not but she sometimes gives Eyes to the Blind, and to the Deaf Ears, which notwithstanding the seeming Regularity of their Conformation, are of no manner of Use to them. Not but that there are fallacious Conformations ; and even among a hundred Impotents whose Marriage has been dissolv'd, we may say there was at least ninety of them exactly conform'd ; but the religious Respect we owe to the Wisdom of Nature, obliges us to be silent, and say nothing of her Mistakes, and to overlook her Errors as if they had never been.

THIS is the Sum Total of the Author of the Memorial's Rhetorick ; and according to that, he speaks no longer like a *Worldly-wise Man*, who lay-
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ing to Heart only the Indissolubility of Marriage, the Effects whereof he feels; never troubles himself whether or no its Sanctity, which he has no Sense of, be prophan'd by an Impotent. He speaks like a Sage of China, like a Disciple of *Confucius*, who ascribes every thing to Nature.

LET us again look into his Memorial, and see whether there is any other Principle to authorize this fundamental Proposition of his, that Conformation is all in all. We find therein two Principles, one Physical, and the other Moral. Let us examine them in Order.

WHEN he is angry with our Searchers for not deciding in Favour of the Marquis's Configuration, he asks them, *Why they question the Effects, when they had seen the Cause?* As much as to say, according to his new Philosophy, Conformation is to the marital Power, what the Cause is to the Effect.

BUT who does not with half an Eye see, that if the Conformation of a Man is an Ingredient among the Causes of his Potency, it is only as an organick and instrumental Cause? And who does not at the same time know, that the instrumental Cause is properly nothing at all? The instrumental Cause, *quate-our* instrumental, is a dead Cause, and stands in need of a first Mover, without which it cannot act; and it is in this first Mover, in this primitive Agent, where the real Cause, the *Causa efficiens*, resides.

WILL the Author of the Memorial dare to tell us, that Conformation is the *efficient Cause* of Potency? We are not out of Hopes, that he will go that length; for when he found in the Replication of *Madam de Gefores*, that what renders a Man Potent is an *internal Principle*, he made a Jest of this *internal Principle*, he would fain have it pass for a Witticism.

THIS makes us believe, that he has taken a Resolution to transport the Seat of Concupiscence, the Seat of what is call'd in Theology, *Fomes peccati*, the

Seat of that Sting of Death which we inherit from Adam; that he has, I say, resolv'd to transfer it from the Inside of Man to the out; so that we shall shortly be told, that the *primum Mobile* of the virile Power resides not in the Blood and Humours, not in a certain Mixture of Qualities which are contrary, but which however agree in producing, as the Poet says, *Discors Concordia Fœtibus apta*, Discordant Concord fit for Procreation; to conclude, not in any inward Principle, but only in the outward Conformation. The Author's Courage will undoubtedly carry him thus far; but let him not think that we will confute him by Books, we will give him no other Book to study but his own Person.

IF therefore to place the *efficient* Cause of Potency in Conformation, is to contradict Nature; if such Conformation no more contributes to render a Man Potent, than organically and instrumentally, just as the Pencil contributes to the Draught of the Picture, it is evident, that we can no more argue from Conformation to Potency, than from a Pencil to a Picture. And how ridiculous would a Man be, if he should say, here is a Pencil, therefore here is a Picture? It would be just as unreasonable to say, here is Conformation, therefore here is Potency.

THIS were right, if Conformation were the *efficient* Cause of Potency; but as it is no more than the organick Cause of it, and as that organick Cause stands in need of a superior Cause to put it in Action, which superior Cause is independent of the Organ it employs, it is evident, that the Author's Cavil against the Judgment of the Searchers is unjustifiable; and he ought not to have said to them, Since you see the Cause, why do you question the Effect? As if Man's Potency was the Effect of Conformation.

THUS is his physical Principle demolish'd, and brought to nothing; let us proceed to his moral Principle, and see how he expresses it.

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Every Man, says he, is reputed Potent in like manner as every Man is reputed sound of Body, if the contrary does not appear by some real, visible, and manifest Default, because *presumitur in qualibet causa, id quod frequenter accidere solet; and as the Gloss says, (upon Chapter Si quis) Vix invenitur impotens ad coeundum.* It is upon him, who is the Accuser, to prove his Accusation, not by Conjectures, but as the last Law in Cod. de probat. says, *Apertissimis Documentis vel indiciis indubitatis & luce clarioribus.* You accuse me of Impotency contrary to the Presumption both of Law and Nature; it therefore lies upon you to prove it; and you cannot do it, but by some real and evident Default in my Conformation.

AND here we don't dispute the first Proposition of the Author's Argument. We grant, that every conform'd Man is naturally presum'd Potent, in like manner as every authentick Writing, bearing the Character of a publick Hand, is naturally of Weight and Credit. But we maintain, that as the Credit of such Act or Writing is eclips'd, or, at least, is suspended, so soon as any Body undertakes to prove it is forg'd; so, in like manner, the general Presumption resulting from Conformation vanishes before an Accusation of Impotency; and the Reason thereof is very natural, because such a Presumption being no more than a loose Induction from the common Course of Nature, it is just that it should give way to an Accusation of Impotency, which is peculiar to a fix'd and certain Subject, such as is the Husband whom the Wife accuses. 'Tis for the same Reason, that the Presumption which renders an Act authentick before it is tax'd with Forgery, loses all its Weight so soon as the Accusation is form'd.

EVERY authentick Act is presum'd to be true and faithful, so long as the contrary is not undertaken to be prov'd; but as this is only a Presumption founded upon the general Order of publick Polity, and is therefore indefinite and general, it ceases so

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soon as there is an Impeachment of Falshood against that particular Act. For as the particular is more home and pressing than the general, it is just that the one prevail above the other. When any Person undertakes to prove an Instrument to be forg'd, and such his Accusation is juridically receiv'd, the Accuser is to prove the Forgery; so likewise we grant it lies upon us to prove the Impotency. But do we refuse to prove it? Far from it; all we do, all we say, is only in order to bring us to our Proof; as on the Part of the Marquis de Gesvres, all that they say, and all that they do, tends only to impede that same Proof. So that by a Cross-grainedness, which always go along with a bad Cause, at the same time that they say to us, *prove*, they do all they can to take from us the Means of proving.

THE Question after this falls upon the Quality of the Proof which we ought to produce. They require from us evident Demonstrations, *apertissima documenta*, Tokens more clear than the Sun, *indicia luce clariora*; but as these Terms are very indefinite, and as every Term is an inexhaustible Source of Ambiguities and wrong Applications, there's a Necessity for the Author to explain himself, he must let us know what he means by these *indubitable Proofs*, these *Tokens clearer than the Sun*; but having already treated of the Certainty or Uncertainty of Proofs in Point of Impotency, I shall refer thither, and only add a Word to conclude the Parallel, which we have begun between Accusations of Forgery, and Accusations of Impotency.

LET us suppose the Person that is accus'd of Forgery, makes Use of the same Argument which the Author of the Memorial offers against us; let us fancy we hear him say to his Accuser, *Every Man is presum'd to be an honest Man, till the contrary is prov'd by some Crime, real, visible, manifest, because præsumitur in qualibet causa id quod frequenter accidere solet,*
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in every Case that is taken for granted, which happens most commonly; that on the other Side, Guilt is never presum'd, according to the Theory which the Doctors have deduc'd from the Law, * *Merito ff pro Soc.* that in short, the Crime of Forgery is still less to be presum'd than any other, according to another Theory founded upon the Law *cum precibus*, in Cod. *de probat.* It therefore lies upon the Accuser to prove his Accusation, not by Conjectures, as the last Law under the same Title says, but by most evident Convictions, *apertissimis documentis*, or by Tokens clearer than the Sun, aut *indiciis luce clarioribus*. Now, the Proof by Comparison of Hand-writing, which is the only one you can make Use of against me, is so far from being an evident Conviction, so far from being a Token clearer than the Sun, that if we do it Justice, we must put it upon the same Level with Conjectures; nay, with such Conjectures as are most to be suspected of Error. Witness the Experiment that was made of it in *Justinian's* Time, of which that Emperor has given us an Account in his *Novella 73*. Witness likewise all that the Doctors have said of it. It therefore follows, that you are without Proof when you have none that's real, evident, or manifest; and if you say, that there's no rescinding the Proof by Comparison of Hand-writing, without letting the Crime of Forgery go unpunish'd, I answer, that since you are necessitated to chuse one of the two Evils, either to let Guilt pass with Impunity, or to punish Innocence, 'tis much better to run the risque of the former than the latter.

DOES not our Adversary perceive his own Picture in this Reasoning? If therefore it is evident, that this whole Structure of Argumentation, which

* *Theory is a School-Term, and signifies a very general Consideration.*

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we have just now put into the Mouth of one accus'd of Forgery, would not at all hinder the Proof of the Forgery by comparing of Hand-writings; can this same Argumentation, when transferr'd into an Accusation of Impotency, hinder the Proof of the Husband's Impotency, by visiting the Wife? Is there not in both Cases the same Ratiocination, the same Principle, the same Consequence? Or, if there is any Difference, does it not consist in this, namely, that in the Case of Forgery the whole Proof depends upon the Speculation of Searchers, and consequently upon a certain Number of very hazardous Conjectures, whereas in the Case of Impotency the Proof is double? For it is deriv'd as much from the Husband's Person as the Wife's, it being certain, that Husband who shuns to make the marital Truth speak for him, renders to his Wife a Testimony of her Virginity, even more unexceptionable than the Testimony which the Matrons give in her Behalf.

WE therefore say, that the Author of the Memorial is, to the last Degree, unfair in his Argument: He would have us prove Impotency, *apertissimis Documentis*; but what does he mean by *apertissima Documenta*, by these evident Proofs? We maintain, and the Proposition is not questionable, that the juridical Proofs are as strong as those evident Convictions he requires; and as Forgery is evidently prov'd, when it is prov'd by a Comparison of Hand-writing, because such a Comparison is a juridical Proof; so likewise is the Impotency of a Husband evidently prov'd, when the Wife's Virginity is prov'd by Visitation, because such Visitation is a canonical and juridical Proof of both together. Canonical, because a Proof by the Canons; Juridical, because admitted into the Usage and Practice of the Courts; and thus the Judge's Conscience may rely upon it, even tho' it were true, which it is not, that the Proof were in it self uncertain and dangerous.

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AND this is an Answer to those Words of the Canon, *Oculus & manus obstetricum saepe falluntur*, the Matrons (say they) are subject to be deceiv'd. Suppose it be so, where is the Searcher (*expertus*) that is not sometimes mistaken? If you want such as are infallible, you must look for them out of the human Creation. And therefore the Remedy which the Doctors and Glosses have found out against the Mistakes of the Matrons, was not by saying they would have no more Matrons or Searchers, but that they ought to chuse out Matrons of consummate Experience, and able Searchers, *debent adhiberi peritissima*, and the Danger is not great in France, where to the Matrons they join Physicians and Chirurgeons more vers'd than Matrons in the Rules of the Art. But supposing, that the Eye and the Hand of the Matrons may likewise happen to err under the Direction of Physick and Chirurgery, does it follow, that the Possibility of erring ought to deprive us of a Proof which is an only Proof? If this be so, what will become of us? There's no more to be done, than to shut up all the Courts of Justice, since, in short, there's no Proof, be it what it will, but Error may creep into it by some Chink.

LET us therefore say, as the 27th Decision of the *Rota* says upon a Question of the same Kind as is now before us. That learned Company, after they had order'd (in an Affair of Impotency) the Wife to be visited, started this Objection to themselves; But the Visitation of the Wife, said they, is a Sort of Proof, which the Canons distrust even at the same time that they propose to make Use of it. May be so, answers the *Rota*; but this is the only Means we have to judge of the Wife's Virginity, and of a Marriage's Consummation, *Non obstabat quod cum probatio per inspectionem sit fallax & lubrica, non potest ex ea duci certum argumentum, quia cum in hac materia non possit dari alia probatio, quando una de conjugibus stat pro matrimonio,*
alius

aliis contra matrimonium; ideo per hoc genus probationis controversia dirimenda est. How different is this Maxim from the Principles taught by the Author of the Memorial! According to him, we must not only abolish the Visitation of the Wife, but likewise all the other Proofs of Impotency as casual and uncertain; nay, we must lay hold of this Opportunity to exterminate the Custom of Complaints of Impotency, and to purge the Church of these Defilements. According to the *Rota*, we must preserve both the Practice of visiting the Wife, and that of all other Proofs of Impotency, because they could not be rejected without stifling all the Complaints of Impotency; tho' were it not for these Complaints, the Prophanation of a Sacrament would be remediless. Thus do Men differently reason, according to the Spirit with which they are animated. If we follow the worldly Spirit, no more Complaints of Impotency, no longer any Proofs, no longer visiting the Wife. If we follow the Spirit of the Church, the Church must judge of Impotency, and consequently must preserve the Use of such Proofs which alone can put the Matter in a way of Issue. According to the worldly Spirit, inspecting the Wife is a shameful scandalous Proof, fit for nothing but to put Modesty to Confusion; and tho' Modesty is but an empty Name, when we speak of a Woman's lying-in, or of curing any Distemper, or the like; yet when the Point in Dispute is concerning a Husband's Impotency, it is a Prostitution, (for the Marquis de Gesures's Advocate has gone even so far;) it is, I say, an infamous Prostitution but for a Moment to offend that Modesty, which upon other Occasions (infinitely less important) they make so little Account of.

ON the contrary, according to the Spirit of the Church, Modesty is truly to be respected, and all Occasions wherein it may possibly be offended, ought to be avoided; but if without committing Violence

lence upon it, there's no preserving the Sanctity of a Sacrament, nor putting a Stop to the prophane Abuse which an Impotent makes of it, it is just that it should give way to Necessity. And in such a Case, the Church can extract from the Shame that goes along with the Inspection, (which is certainly an Evil;) she can, I say, extract from that Evil a Remedy for Sacrilege, and consequently a Good of an infinite Value, in much what the same Manner as the Divine Wisdom can from Concupiscence, the Source of all Evils, extract so great a Good as is the Sanctity of Marriage: *Fecit enim*, says St. Austin, *de libidinis malo, nuptiarum bonum*; the Blessing of Marriage is built upon the Sin of Concupiscence.

SUCH is the Difference between these two Spirits; and this Contrariety which is observ'd between the one and the other upon the pretended Turpitude of the Inspection, is likewise observ'd upon its pretended Uncertainty.

THE World cries out, Nothing is more uncertain than the Consequences which are deduc'd from the Inspection. The Church answers, Experience does not inform me, that those Consequences are so uncertain; and I commonly find that the Wife is a Virgin, when the Husband refuses to undergo a Tryal. These two Things, a Husband who withdraws his Person from Enquiries, and a Wife who seems to the Marrons to be a Virgin, produce much the same Effect, as if the Church, for Instance, should find in a Field a Figure of a Land-mark accompany'd with two Pieces of a Stone; and by putting the two Pieces together, they appear to have been formerly one and the same Stone, she would not scruple to say, this is a Land-mark. In like manner, when I see on the one Side a Husband who hides himself, and on the other a Wife who says, I am a Virgin, and will be judg'd by the Searchers; when I find these two Fragments, I compare them together, and I observe that

that they so perfectly tally with each other, that those two are no more than one and the same Body of Proof. After which I no longer scruple to say, here is Impotency.

NOW, if after this I am deceiv'd, which is not very likely, so much the worse for them that deceive me; but 'tis better for me to be expos'd to the Danger of being deceiv'd, than to leave remediless the Prophanation of a Sacrament. Perhaps this Danger of Prophanation does not weigh much with you wordly Men, but that's because you have no Conception what it is to prophane a Sacrament.

BUT let us draw to a Conclusion, since we only undertook to handle the general Thesis; and since, if we were to descend to the Examen of the Author's Remarks upon the Interrogatories and Reports, we should find too vast a Field, and too great a Crop of just Objections, it would be almost impossible for us not to push too home the Advantages which the Author gives us. But besides that all sensible People will know how to detect the little Arts and Subtilties which he makes Use of to infuse a Belief, that there's a Contradiction in our Argument; We hope so fully to confute and refel all these vain Appearances and idle Phantoms in Court, at the Hearing, that perhaps the Author shall have but small Cause to rejoice or triumph. Let us therefore leave all these frivolous Imaginations, and only examine one Place of the Memorial, which because of the Importance we cannot let pass without Reflection.

The Marquis de Gesvres is as sensible as a young Man of his Age ought to be, of the Tokens and Sallies of Nature, venit injusta Venus; he neither fears how often, nor how nicely he is inspected. But let us suppose, that in the first Visitation, in a second, in a third, a young Man of the best Constitution in the World, in his Bed-chamber; News is brought him of the coming of four grisly old Fellows, more likely to check the desir'd Token. (that

(that Donative of Fancy and Nature) than to promote it ; suppose, I say, that this young Man should not be so fortunate as to find Favour in the Eyes of these Searchers, or that they themselves do not find Favour in his, what Conclusion can any one draw from thence ?

A MAN, without being extremely sharp-sighted, may see what the Author of the Memorial would insinuate to us ; he talks (and in all Probability knowingly too) of the Condition of the Marquis de Gesvres. He declares to us, that let us reiterate our Inspection never so often upon him, it will have no other Event than the Visitation already pass'd ; not but that the Marquis de Gesvres is, according to him, capable of the Ebullitions so familiar to Persons of his Age ; but because the Searchers who shall visit him, will be always *old grisly Fellows*.

WE are willing to believe, that in this Discourse the Author has only a mind to be merry ; but be that as it will, is it not plain that the Marquis de Gesvres confesses thereby he is impotent ? Is it not evident, that he has intrusted this Secret to his Advocate, who, out of Principle, now reveals it to the whole World ? For that's the Sense the whole World has put upon his Memorial. The Moment that it was publish'd, there was not a Man that doubted of the Marquis's Impotency ; and thus already we have got one Part of the Land-Mark ; we only want the other, and that will be found by the Inspection which I contend for.

BUT, say they on the other Side, to what Purpose should we inspect the Marquis so often ? There are but two Motions, the natural, and the provok'd ; now the first cannot be in the Presence of the old grisly Searchers, and the second is a Sin. We leave to the Publick the first Proposition of this Argument ; but as for the second, we will take upon us to say, that the Marquis's Squeamishness of Conscience is a Sort of a Prodigy. Will he be more scrupulous than

Hoftiensis ;

Hoftiensis, Cardinal of the Holy Roman Church, and sometime an Official? Does not that great Man say the Judge ought to examine, or rather recommend to the Searchers to examine, whether or no the Husband, accus'd of Impotency, is capable of those Sallies which the Marquis boasts of, *utrum vir moveatur ad coitum*? Will he be more rigid than *Præpositus*, out of whom the Passage before quoted shews, that that was the Practice of his Time, and that he did not in the least disapprove of it? Will he in short, be more religious than all the Officials of *France*, who allow the Searchers to make Use of the Exploration mention'd in those two Canonists? A Truth which is prov'd both by the Process of *Cabu*, and by that of *le Grosse*, and by those of the *Sieurs Jacob* and *Verdin*. We don't indeed find, that the Impotency of *Hubineau*, and that of *Mercier*, were grounded upon this Probation; but then it was in no very different manner, for both their Wives were inspected; and 'tis observable, that all these Examples, except that of the *Sieur Jacob*, are posterior to the Abolition of the Congress.

To prove that is the Practice, *Madam de Gejwes's* Advocate appeal'd to publick Notoriety; and as every publick Notoriety is a Point of Fact, this, methinks, should exclude all manner of Reasoning: We shall however make Use of one Argument, by way of Reasoning, which shall evince the Certainty of that publick Notoriety.

A THOUSAND and a thousand Men have been judg'd proper for Widows, who have not been found to be so for Virgins. The Registers of the Offices are full of these Sorts of Examples. Now I ask the Author of the Memorial, what's the Ground of this Distinction, between the *Necessarium* for a Virgin, and the *Sufficiens* for a Widow; I say, why this Distinction, unless it be for the Reason *Soto* has given in these Words? *Non sufficit si arriat vir, sed & opus est*
cum

cum ita arrigere ut virginem deflorare possit, si contraxit
non virgine. The Degree therefore is what they
 judge by; the more or the less; if therefore the
 Degree is seen, why may not we see the thing of
 which the Degree is only an Accident? How can we
 judge of the Comparative, unless we see the Positive?
 It is therefore clear, that this Positive is seen, and al-
 ways was seen; which being so, the Marquis de Ges-
 vres is scrupulous without a Cause, when he tells us,
 that the provok'd Motion is a Sin.

BUT we leave him to his Scruple, since there is
 no curing him of it, (for there is no Scruple so incu-
 rable as that which is suggested by a Desire of Self-
 defence,) and we shall only ask him, whether for a
 Person of his Rank and Reputation, there is an abso-
 lute Impossibility to put the Searchers in a way of
 observing an innocent and natural Motion.

IN an Affair wherein not *his Fortune* is concern'd,
 (for here his Fortune goes for nothing, whatever his
 Advocate said to the contrary in Court,) but in an
 Affair, I say, which touches his Honour, which is
 the most valuable thing belonging to Men of Quality;
 In such an Affair, I say, and in such a Town as *Paris*,
 can there be any Want of Expedients to a young
 Lord who is able to buy them, cost what they will?
 'Tis not for us to seek out Expedients, or to tell him
 where they are to be found; and since he does not
 seek them himself, 'tis plain what his Reasons are.
 Heretofore a Man was deem'd Impotent, when he re-
 fus'd the Congress; we need only follow the same
 Presumption, and deem him an Impotent, who shews
 himself so fearful of a new Visitation.

BUT we have said more than we needed, for
 baffling such strange Principles as those which the
 Memorial lays down in general. If any thing re-
 main'd to be done with respect to the Publick, it
 would be to vindicate Madam de Gesvres from an
 Imputation of four Lies, which the Author charges
 her.

her with, no less bluntly than maliciously; but she has already clear'd her self from the first, by her Note upon the second Article of her Interrogatory. And as that Note appear'd before the Memorial, the Justification may be said to be before-hand with the Accusation. As for the other three Lies, the Publick will easily see, that the Author transforms them into Lies, by little Witticisms and fruitless Declamations. Nor could it be otherwise expected, but that after he had throughout his whole Book made what he pleas'd to be true, he should, at the End of it, make what he pleas'd to be a Lie. And here we might return the abusive Language, which the Author uses against *Madam de Gesvres* in that Memorial; but he has done her so much Service in unveiling the Impotency of the *Marquis de Gesvres*, that it would be Ingratitude in her not to pardon his base Reflexions.



RECAPITULATION,

CONTAINING

A Parallel of the Two Systems of Monsieur and Madam DE GESVRES.

HAVING been more prolix than we at first design'd to be, we thought that the Work requir'd a Recapitulation, exhibiting the Connexion of the fundamental Principle with its Consequences, as well as the Connexion of all the Consequences among themselves; as likewise tracing back the first Principle of the Author of the Memorial, in order to demonstrate the Absurdity of it, and thereby to destroy the whole System.

THE

THE fundamental Principle of *Madam de Gefures*, is, that the Marriage of an Impotent cannot be a Sacrament, because every Sacrament being a visible Sign of some invisible Mystery; and that of Marriage being destin'd to signify, by the Capacity of the Unity of the Flesh and the Identity of two Persons, one of which is the Head, and the other the Body; and the Sacrament of Marriage (I say) being destin'd to signify, by such Identification, the coelestial Unity of Jesus Christ as Head, and the Church as a Body, subordinate to that Head: this Representation is impossible to be fulfill'd by a Person incapable of uniting himself in the same Flesh with his Wife, and so to become her Head.

FROM this Principle, which is incontestable in Theology, the first Consequence that arises, is this: That the Marriage of an Impotent not being possible to be a Sacrament, it is, for that Reason, a Profanation of a Sacrament; nay, a Profanation so much the more sacrilegious, as it serves both for an Occasion and a Veil to a continu'd Progress of Sin and Impurity, abominable to Nature's self.

FROM thence arises another Consequence, namely, that the Church never could refuse, nor ever did refuse the Assistance of her Authority to the Wife of an Impotent, whenever she besought her to deliver her from so terrible, and so sad a Condition. Now, if upon such Occasions she has sometimes exhorted the marry'd Couple to Continence and a fraternal Life, it never was but when they both freely consented thereunto.

N. B. THE Dissertation that follows, and is contain'd between the two Crotchets, was design'd for another Place; but the Author thinking it would interrupt the Course of his Argument in that Place, thought fit to transplant it hither.

[HERE it is to be observ'd, that when the Author so positively assures us, that the Church in former

Ages

Ages never us'd to give any other Answer to Complaints of Impotency, than *quam non habere potes ut uxorem, habeas ut sororem*; if you can't have her as a Wife, have her as a Sister; and when to confirm his Proposition, he cites the Chapter *Quod sedem*, which is made by Alexander III. and the Chapter *Consultationi*, by Lucius III. he makes a wrong Use of those two Popes Decisions. For besides that all the Texts where such a Resolution is found, ought to be explain'd by Chapter *Laudabilem*, which supposes mutual Consent, *si ambo consentiant*: Besides, I say, this Reason, which is unsurmountable, because of the Necessity there is to understand the Canons of the Church in a Sense that may reconcile them, it is farther to be observ'd, that it is certain that Alexander the III'd's Answer to the Bishop of Amiens, from whence the Decretal *Quod sedem* was taken, had a Retrospection to the Ancient Usage of the Church of Rome, who was wont to say to the marry'd Couple when either of them was incapable, *Live like Brothers and Sister*. It is likewise certain, that this Usage is attested by some Antiquities, and by two or three Decisions of some Popes preserv'd to us by the Ancient Collections of the Decretals. But in the first place, none of those old Monuments mention that Usage any other wise, than as a particular Custom founded upon no Law or Canon of the Church, *Consuetudo Romana Ecclesie*: 'Tis a consecrated Phrase, a Phrase which is continually made Use of, and never is chang'd; which shews, that that Usage was appropriated to the Church of Rome, consider'd as a particular Church. But what afterwards happen'd, demonstrates it beyond Dispute. Gregory IX. having undertaken to compose a Code for the Universal Church, and in order thereto to collect together the Decisions of his Predecessors, which were scatter'd up and down in Books, either imperfect or not authentic; Gregory IX. I say, in Pursuance of this Design

Design, took care to exclude from this Code, as well all those Decretals, as the Fragments and Portions of them, that could give any Occasion to believe, that the Universal Church meant to espouse that particular Usage of the Church of Rome. There was, for Example, in the first or second Collection, a Decision of Clement III. which seem'd to say, that in no Case, no, not for Impotency, the Wife might be separated from her Husband, and this upon the Foundation of that Usage of Rome. * Gregory IX. took Care not to introduce this Decretal into his Compilation. And the Reason was, because he found it was contrary to the Discipline of the Universal Church; the same likewise may be said of the Decretal, *Quod sedem*. That Decretal, in its Preamble, gave an Account of the Usage peculiar to the Church of Rome, and did

* Originally the Decretals of the Popes were no more than Answers upon particular Cases; and then, whatever Respect they claim, they are still no Laws of the Church. They never are such, but when they are offer'd as Laws; and when afterwards the Church accepts them for Laws, by admitting them into Practice: Thus, properly speaking, 'tis the Church's Acceptation which gives to a Law the full Seal of its Authority. This Principle is so universal-ly known, and has been so well establish'd by M. de Marca, that no Body questions it, at least in France. Therefore all those ancient Answers of the Popes, which seem'd to approve of the particular Usage of the Church of Rome, and which recommended fraternal Cohabitation in Case of Impotency; all those Answers, I say, were never the Church's Laws, either because the Popes never offer'd them to the Church for general and universal Laws, or because the Universal Church never accepted them, or admitted them into Practice, as appears from the Example of the Church of France, which every Body agrees did never conform therewith,

it in these Words: *Verum licet Ecclesia Romana non consueverit propter naturalem frigiditatem, nec propter alia maleficia legitime conjunctos dividere, &c.* But tho' the Roman Church uses not to dissolve lawful Marriage for natural Frigidity or Witchcraft. But is concluded with a Decision contrary to this same Usage; for this is the Resolution which Alexander III. gave upon it: *Sicut puer qui non potest reddere debitum non est aptus conjugio, sic quoque qui impotentes sunt, minime apti ad contrahenda Matrimonia reputantur*: As a Boy who cannot perform the Duty of Marriage, is not fit for it, so neither are Impotent Men. What does Gregory IX. do, when he was minded to give a Law to the Universal Church, and make a Code for her? He cuts out all the Preamble which spoke of the Usage of Rome, and which seem'd to approve of it. Of the whole Body of Alexander's Decretal, he retains no more than the Decision above-transcribed, and by inserting it in his Code, he proposes it as a Rule to the Universal Church, who accepts and embraces it. Pray, why this picking and culling, why this cutting off, unless it were to give us to understand, that the particular Usage of Rome being contrary to that of the Universal Church, nothing ought to be left in the new Code that might erect it into general Law. And indeed Gregory IX.'s Compilation was no sooner publish'd, but the Church of Rome herself departed from her particular Usage, and conform'd herself to the whole Body of the Church, which is the Occasion why, since that Time, we find no Answer of any Pope ordering or advising fraternal Cohabitation in Case of Impotency.

WHAT does the Author of the Memorial do after this? He goes and takes this Fragment of a Preamble, which was rejected by Gregory; this proscribed condemn'd Scrap, he goes, I say, and endeavours to make of it a general Law of the Church, giving Monsieur Pishou his most humble Thanks for pre-

ving to him that Monument, tho', by the way, he is not beholden to Monsieur *Pirhou* for't, but to the ancient Collections of the Decretals, which never had any Authority in the Church, and which were never look'd upon as any thing else but Collections of Curiosities.

Now, if after this we are ask'd why *Gregory IX.* gave a Place in his Compilation to the Decretal of Pope *Lucius*, which begins with the Word *Consultationi*; if any Body wants to know, why that Decretal which retrospects to the ancient Usage of *Rome*, was not likewise left out of the new Code, the Answer shall be fetch'd from the Decretal it self; and in order to understand this Answer, you must know, that the Chapter *Consultationi* is in the Case of a Man who had marry'd a Woman who was ill-fram'd for the conjugal Purposes, but whom he had marry'd, tho' he knew of her Imperfection; which is inferr'd from these Words of the Text: *Licet incredibile videtur quod aliquis cum talibus contrahat matrimonium*, tho' it may seem incredible that any Man shou'd marry with such. This Circumstance has given the Canonists Occasion to believe, that *Gregory IX.* admitted this Decretal into his Compilation, on purpose to introduce that Rule, which the Summary at this Day makes of it: *Contrahens scienter cum impotenti ad copulam, ab ea non separetur*, the Man who knowingly contracts Marriage with a Woman unfit for it, shall not part with her. And upon this Foundation, see what a Meaning *Innocent IV.* puts upon that Explication; *Innocent*, I say, who liv'd in the Time of *Gregory IX.* and was his Creature; *Innocent*, who labour'd upon *Gregory's* Compilation immediately after it was publish'd, and who, in short, was almost his immediate Successor in the Pontificate: See, I say, how this great Canonist, this great Pope, interprets the Decretal *Consultationi*; behold, for what Purpose, and for what Doctrine, it was put into the Code of

Gregory IX. He supposes, that in Reality it obliges the Husband of the incapable Wife to live like a Brother with her, according to those Words of the Text, *Romana tamen Ecclesia, in consimilibus consuevit judicare, ut quas tanquam uxores habere non possunt, habeant ut sorores*; but then, in his Opinion, this does not hinder the Husband from taking another Wife, during the Life-time of the former. Why does it not hinder him? Because it is not incompatible for the same Man to be Husband to one Wife and Brother to another; as the Husband of the one, he may converse conjugally with her; and as Brother to the other, he performs towards her all the Offices of a Brother, that is to say, he may assist her in her Necessities, and supply her with Food and Rayment, being oblig'd in Reason so to do, since he knew before the Marriage his Wife's personal Defect, which render'd his Marriage void. And it is this Interpretation of **Innocent IV.** which has stirr'd up in the Schools the Question which is so frequent among the Canonists *Utrum maritus ob impotentiam uxoris separatus teneatur alere uxorem?* Whether a Husband separated from an incapable Wife, be bound to maintain her?

WE have no Reason to believe, that the Author of the Memorial understood better than **Innocent IV.** the End and Object which **Gregory IX.** propos'd to himself, when in his Compilation he inserted the Decretal *Consultationi*. Surely so celebrated a Canonist as **Innocentius**, a Canonist who was Contemporary with and Successor to **Gregory IX.** could give a better Account than any Body else of that Pope's Intention. The Author therefore turns aside the Decretal of Pope **Lucius** from the Object for which the Church propos'd it to the Faithful. She only propos'd it to them by way of Instruction, and to let them know that a Husband who rejects an incapable Wife to marry another, owes a brotherly Tenderness and Compassion to that rejected Wife, when he knew of her

her Imperfections before he marry'd her; and yet if our Author is to be believ'd, the Intention of the Church was to teach us, that a Husband not Impotent, was to continue expos'd to the Dangers of a fatal Cohabitation; and that to give it the Name of a fraternal Life, was enough to sanctify it; tho' the Fraternalship was perish'd, or at least was perpetually in Danger of perishing. And thus by following his own single Sense, and disdaining to be guided by the Canonists, he has made the Texts to signify even what he thought fit.]

FROM the Necessity of the Church's judging of Complaints of Impotency, there arises another Necessity, namely, that of having Proofs; and this is productive of another, which is to have such Proofs as are of a moral Certainty, since it is impossible to have either a physical Certainty, which Nature denies, or a demonstrative Certainty, which human Wit cannot attain to in Disputes about Facts, and especially occult Facts.

THIS is the whole System of *Madam de Gesures*; and it is manifestly a very plain, a very natural, and a well-deduc'd System; but it's chief Merit consists in its Conformity to the Principles and Practice of the Church.

ALL that is urg'd against this Practice falls upon the Church, and not upon the Cause of *Madam de Gesures*. But the Blows that are levell'd at it, are no less contrary to Reason than disrespectful to the Church. The Inspection of the Wife, is a Proof that has been made Use of in all Ages, and in all Countries; a Proof founded upon Experience, which informs us, that the Condition of Virgins is different from that of other Women; and consequently a Proof whose Credit cannot be dubious, because some Speculators have thought fit to reckon it so; for Speculation is of no Force against Experience.

AND in the main, even they who deny the Solidity of this Proof, do only dispute its physical Certainty, which is the only one that is taken notice of in Medicine; but none of them all dispute its moral Certainty, which falls within the Cognizance of the Tribunals.

AND it is to no Purpose to say, that thereby the Indissolubility of a Sacrament seems expos'd to some Danger; for that Danger is no more than what happens to accus'd Innocence. And as it would be ridiculous to set aside all Accusations for secret Crimes, for fear Innocence should suffer, it were no less a Madness to banish all Complaints of Impotency, merely because the Indissolubility of a Sacrament may suffer thereby.

As for the Sake of the publick Security, the Courts of Judicature do not scruple to indanger Innocence; so likewise for the Sake of the Holiness of a Sacrament, they make no Scruple to oppose the Indissolubility of it. And to conclude, since we are forc'd to make Choice of one of the two Evils equally terrible, either to dissolve the Sacrament, or to overlook the Prophanation of it, Reason will have us determine on that Side where there's Proof, tho' not demonstrative, against that for which there's no Proof, neither demonstrative nor of any other Kind.

ACCORDING to this sage Oeconomy, the Church has given Sanction to certain Proofs; the strongest and most efficacious among which, is, That we offer not only the most efficacious, but the most ancient and the most canonical; since it has on its Side the Authority of two Decretals, purposely made for the Case of Impotency; and in short, it has the Advantage of deriving its Certainty, not only from the Person of the Wife, but likewise from the Husband's refusing to show, that he is fit to be a Husband; which is the true Touch-stone, and if we may so say, the Proof of the Proof.

THE

THE Use of this Proof was not destroy'd with the Congress; neither the Terms of *Langey's* Decree, nor any Parity of Reason, can countenance this whimsical Proposition, that the Abolition of the Congress carry'd along with it the Abolition of the Inspection of the Wife, and of the other Proofs of the Church; and the Examples subsequent to the Abolition of the Congress, plainly shew, that it is equally contrary to publick Notoriety and to Reason.

THE Inconveniencies of the Visitation offer'd and demanded by us, are imaginary; it is no more fallacious, than many other casual Proofs so commonly made Use of in Courts of Judicature: 'Tis at least certain, that if it be casual, none would be harm'd by it but the Wife, and the Husband would run no risk at all in it; for if it be true, what they say, that a Virgin may bear about her the Appearances of a marry'd Woman, at least it is certain that a marry'd Woman cannot, after a certain conjugal Cohabitation, be like a Virgin. If therefore its Certainty may be exceptionable, it would only be so when it declares in Favour of the Husband. For in the contrary Case, and when it decides in Favour of the Wife, its Certainty is at least moral. You may see the Foundation of this Opinion in *Zachias*; but tho' the Certainty is not equal on both Sides, it is sufficient for authorizing the Judge to order the Proof so, that it may present it self on that Side where it is morally certain, or experimentally so.

To conclude, since Practice, improving upon the Canons, has added the Inspection of the Man to that of the Woman, no Accusation of Impotency has been try'd and made an End of, but by the Probation of the Man, or the Condition of the Woman.

HUBINEAU, and so many other Impotents, who have been freed from their Marriage-Bonds since the Congress, leave no room for disputing upon this Head. It is likewise what *Hottman* taught, when

he said, that the Husband ought to shew he was a Husband, or suffer his Wife to make herself out to be a Virgin.

THIS falls to the Ground that false Principle, newly coin'd to serve the Cause of Monsieur de Gesvres, viz. That the Appearance of a Husband makes the Husband: A Principle contrary to all the Notions that have been hitherto form'd concerning Impotency; contrary to the Principles of the Canons; contrary to the Documents which have been left us by all who have handled the Subject of Impotency, whether Physicians or Canonists; contrary to Experience, which teaches us that above three fourths of the Tribe of Impotents are regularly conform'd; contrary, in short, to Reason, which teaches us that Conformation, when accus'd of Impotency, cannot, tho' entire and regular, prove Potency; in like manner as the most compleat Regularity in the outward Form of a written Instrument, concludes nothing for the Truth and Sincerity of the Instrument, so soon as ever the Falsity of it is offer'd to be made appear; or at least so soon as the Judge has admitted of such an Offer to make the Falsity appear; contrary to the Elements of the most popular, the most universal, and the least contested Physicks, which tell us, that the Conformation of a Man contributes not to the Power of a Man, any otherwise than as the organical and instrumental Cause, utterly unable to act without the Influence of an efficient Cause, the Principle whereof is wanting in all who are touch'd with Frigidity. Contrary likewise to the Rules of Logick, which teach us that the Argument from Conformation to Potency, is a Consequence drawn *à causa instrumentali ad effectum*; and consequently the most enormous Fallacy that Human Wit is capable of. To conclude all in a word; contrary to the general Impression which all Men have, who are apt to believe, that a Conformation which fears the Beard or grisly Faces

Faces of the Searchers, is so little a Sign of Potency, that, on the contrary, 'tis the surest Sign of Impotency : And therefore when this Sign is in the Husband, and at the same time the Signs of Virginity are in the Wife, we may say, that then it is no longer guessing at Impotency, 'tis seeing it.

THIS is an Epitome of *Madam de Gefures's* Argument, against which the *Marquis de Gefures* sets up a System altogether new; a System concerted upon the Exigencies of his Person; a System, in short, founded principally upon that Error which was never before heard of, namely, that what raises Marriage to the Dignity of a Sacrament, what makes it to be the mystical Sign of Jesus Christ's Union with the Church, is purely and solely the Indissolubility of the Bond; a Principle so strange and unaccountable, that if the Author could have foreseen the Consequences of it, he would have shiver'd with Horror at it. For it would follow, that the Marriage of the *Greeks*, *Schismaticks* or not *Schismaticks*, would not be a Sacrament, since Adultery dissolves it. The Marriage, even of the *Orthodox*, would not become a Sacrament without Consummation, since before Consummation it may be dissolv'd by a Vow of Religion. In short, the Marriage of an Impotent would be a true and lawful Sacrament, since setting aside the Potency or Impotency, nothing would hinder its Bond from being indissoluble. And; by this means, the Church, which has put an End to the Marriage of so many Impotents, is guilty of an infinite Number of sacrilegious Ruptures.

THIS is certainly the Reason, why our Author forbore to prosecute his Principle in the Residue of his Memorial. Thus we may compare this rare Production of his Wit to a Child that is dropt in the Streets, and who is abandon'd by his Father the very Moment when it begins to see the Light; and this is what made the Author run into the Allegations of the

Decretals, which he turns and winds all manner of ways, according to the Necessities of his Cause, without troubling himself whether or no the Perspicuity of their Expressions gives the Lie to the false Interpretations he puts upon them. Witness his Construction of Chapter *Proposuit*.

BUT because, notwithstanding all his Subtilty, he finds it impossible for him to make out, that the Decisions of the Church are on his Side, he is resolv'd to set up to be a Censurer of them; for this Reason, he says there is nothing in the Canons but *Contradiction, Irresoluteness, Impurity*. And tho' *Alexander III.* was a very great Man, he makes no Scruple to assault his Memory, fancying that the greatest Names must lose their Lustre whenever he pleases to breathe upon them.

AGAIN, because all this is not enough to do his Business, he is resolv'd, by fair Means or foul, to make of *Langey's* Decree a Law that shall deprive the Church of the Use of all her Proofs; and therefore he hatches this amazing Paradox, that no Man can be judg'd an Impotent, but upon such Proofs as may make Incredulity it self credulous, that is to say, upon such Proofs as the whole Creation cannot furnish; from whence it would follow, that as often as the Church has dissolv'd Marriages upon the Foundation of Impotency, since the Age of *St. Gregory* to this present Time, so often has she been guilty of a Rashness mix'd with Impiety, which I shiver to write.

FOR, in short, if to judge of Impotency, we must necessarily produce Proofs superior to all Kind of Doubt, just or unjust; and if the Proofs of this Kind are beyond the Power of Human Wit, it is clear, that the Church, who never yet could meet with such in order to the untying the Marriage-knot, could not, without sacrilegious Temerity, pronounce all those Sentences of Dissolutions which she has pronounc'd till this present Time.

To shut up the Discourse: If we run thro' the whole System of this Author, (tho' I think it can hardly be called a System,) we shall find nothing in it but Contempt and Irreverence towards the Church; nothing but a perpetual censuring of her Discipline, and a presumptuous cavilling at her Maxims and Usages. Thus may Madam de Gesvres justly say, that her Cause is so essentially link'd to that of the Church, it is impossible one should fall without the other.

M. BEGON, *Advocate.*

BENARD, *Proffor.*



Second P L E A

For Madam DE GESVRES against
the Marquis DE GESVRES,

*Concerning the Interrogatories of the
Parties, and the Searchers Reports.*

GENTLEMEN,

WHEN I first consider'd with my self how it came about, that Questions of Imporency being naturally short and simple, this present Suit should yet be so tedious and perplex'd, I confess I was almost ready to impute the Fault to my self; but the true Reason of it is this: I saw the Marquis's Advocates making great Inroads into Antiquity; I saw them combating the Discipline of the Church,

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carping at her Canons, altering her Doctrines; my Duty was to have left them to themselves, and to have let them wander on in their mistaken Paths wherein they had lost themselves: Instead of that, I ran after them without minding that I lost my Way with them.

If any thing may serve me for an Excuse, it is the Concern I have for a Cause which is yet more moving on Account of its Justice, than for its Importance.

LET us say nothing at present of its Justice, because that's the thing in Dispute: But as for its Importance, how could I see a young Person of Condition, Merit, Virtue; a Person undoubtedly worthy of a better Fate? How (I say) could I see her expos'd, not to the Danger of living again under the Lash of an impotent Husband, (for Death would soon deliver her from that great Unhappiness,) but to the Danger of losing that last poor Remains of an expiring Life, which her Infirmities, fed by her Misfortunes, have left her?

CERTAINLY a Man must be well acquainted with the inward Sentiments of an Advocate, to judge how uneasy, how alarm'd he must be, when he is intrusted with a Cause whose Object is so touching. At that Time he is afraid of every thing; a Shadow, a Phantom makes him start, and his Zeal leaves him without that discerning Faculty, which he should have to distinguish what Objects he ought to fight against, and what he ought to despise.

HAVING by a printed Writing (I hope) dispers'd all those Illusions which seem'd prepar'd only to frighten me, I come to the true *Gist* of the Cause; I mean the Examination of the Interrogatories, and the Reports of the Searchers.

As to the Interrogatories, I confess they contain nothing but Things charg'd by one Side, and deny'd by the other, and consequently nothing decisive.

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THE only Use that the Judge's Wisdom can make of them in this Cause, is to compare those of the Husband with those of the Wife, and so by that Parallel to judge of the Sincerity of the one, and the Fraudulency of the other ; but this depending more upon the Impression which you your selves, Gentlemen, shall receive from reading them, than upon my Reflexions we can make to you, we believ'd it our Duty to leave this Criticism to your own great Wisdom and Discretion.

ONE Observation we can't help making, because it serves to clear our Searchers from the groundless Aspersions which have been thrown on them, and which a little contributes to illustrate the Oeconomy of their Reports.

MADAM *de Gesvres* has caus'd to be notify'd to the Marquis two Sorts of Articles, upon which he has been as often interrogated ; one on the 23d, another on the 26th of *April*. The Articles which compose the Substance of the Interrogatories, are reducible to one and the same Point, viz. *Non-Consummation of Marriage* ; and this *Non-Consummation* is prov'd by the Privation of the motive Faculty, which is charg'd in Articles XV, XVII, XXIV, and XXVII, of the first Interrogatory, and III, IV, V, of the second. It is likewise to be observ'd, that in one of these latter, the Privation of the elastick Power is likewise charg'd ; upon which this is the Reflexion that the Cause naturally admits of.

* IT is manifest, that all that Madam *de Gesvres* could aver, with a positive Assurance, consisted in the

* The Marquis *de Gesvres's* Advocates have been so childish as to plead, that Madam *de Gesvres* having laid her Action for Impotency, it could not be understood of Frigidity, but only a real and visible Impotency ; but don't

the Description of the Condition of a Husband, whose Infirmary she was but too well acquainted with. It was this Description alone that she could speak knowingly of; but it was not possible for her to dive into the Cause of it: There was a dead Palsy in the Person of the Marquis de Gesvres. This was all she was capable of knowing; but that this Palsy was a natural or an accidental Misfortune, she could not certainly learn by any Means whatsoever.

WHERE any Doubt arises, the Presumption is for natural Impotency, for Frigidity. And thus it is Frigidity that the first Articles do ascribe the Marquis's Impotency to. But scarce were these first Articles notify'd, when Madam de Gesvres is inform'd, that the dead Palsy might be caus'd by some Plaisters apply'd by a Quack. Upon this she causes fresh Articles to be notify'd, wherein she alledges a With-

don't they know, that the Word Impotency is a general Term, which takes in all Incapacities of a Husband, from whatever Cause they proceed? Do they not likewise know, that in the Petition the Wife charges only Impotency in general; and in the Facts, sets forth the Species of it as well as she can from her own Experience. The Petition of Madam de Gesvres runs thus: It is however true, that the Marriage is unconsummated thro' the Marquis de Gesvres's Impotency, which was known to the Duke de Tresmes, and of which your Petitioner has been but too well convinc'd by indubitable Tokens and Facts. This shews that we have Reason to say, That Madam de Gesvres neither did nor could judge of her Husband's Impotency, but by its Effects, reserving to the Searchers to judge of the Cause when they visited the Husband; and surely, if to impute the Marquis's Impotency to Frigidity, is to forget the Import of the Petition, it is to forget one's Dictionary, not to remember that Impotency is the Genus, and Frigidity the Species.

ing of the Organs, a shrinking, a drying up of the Nerves, caus'd by the Plaisters; and thereby she sets forth alternately two Sorts of Impotency: The one natural, residing in the Blood, and therefore latent; the other accidental, residing in the Exterior Organs, and consequently apparent. I say, that these two Impotencies are alternately set forth; for it were ridiculous to imagine, that Madam de Gesvres meant to charge them cumulatively. Thus stood the Business, when the Sentence of the 30th of April was obtain'd, by which the Official appointed Searchers to visit the Marquis: Which Sentence of Nomination prescribes to them the Lesson they were to follow, points out to them the Object they were to pursue, and trac'd out the Path by which they were to arrive at it. Give me leave, Gentlemen, to repeat the Terms of this Sentence.

To find out whether the Defendant is impotent or not; to draw up this Report from the Condition of the said Impotency, upon the Facts and Articles notify'd at the Request of the Plaintiff, upon which the Defendant has been interrogated.

THIS Order consists of three Parts: One shews the Searchers the Butt they are to aim at; *To find out whether the Marquis be impotent or not*: This is to be their Object.

THE other wills them to apply themselves to penetrate into the Condition of his Impotency; that is to say, as I suppose, the Nature and Quality thereof; whether accidental or natural, whether caus'd by Frigidity or Plaisters.

THE third points out to them the Tokens and Footsteps by which they were to investigate the Impotency. Follow, says the Sentence to them, the Traces which you will find mark'd in the Complainant's Articles; confront them with her Husband's Person, and see whether they are consonant to the Condition you shall find him in.

AFTER

AFTER this Analysis of the Sentence, let us take to Pieces our Searchers Reports; let us see whether they have fulfill'd what the Sentence requir'd of them; let us begin with the Reports of the Sieurs Gayant and Marechal, who were nominated by the Marquis de Gesvres.

We have found in the said Marquis de Gesvres, that the exterior Parts, serving for Generation, are of the requisite Figure and Size; but these Conditions not being sufficient to judge of the Consummation of Marriage, there being Occasion for two Faculties, the Motive and Elastick, we cannot absolutely determine, whether or no he is able to perform the Duties of Marriage,

THERE are three Parts in this Report, which correspond with the three Parts of the Sentence, tho' rang'd in a different Order from that of the Sentence.

IN order to satisfy the first Part of the Sentence, which order'd the Searchers to apply themselves to find out whether the Marquis was impotent or not, they tell you, Gentlemen, that they could not absolutely determine whether he was able to perform the Marriage-Duties. Pray, observe; the Resolution, or rather the Irresolution of this Report, falls not upon the Fact of Consummation or Non-consummation, but upon the personal Capacity or Incapacity; not upon the Act, but the Power; not upon the Exercise, but the Faculty. For the Searchers don't say, *We cannot absolutely determine whether or no the Marquis has consummated his Marriage, but whether he is able to perform the Duties of his Marriage.* And thereby they testify, that as the Sentence order'd them to bend themselves to discover Potency or Impotency, so was it to the Enquiry of Potency or Impotency, that they confin'd their whole Attention.

IN Obedience to the second Part of the said Sentence, which enjoin'd them to give an Account of the Condition of the Impotency, and to find out whether it

was caus'd either by natural Frigidity, or by the drying up and shriveling of the Organs, thro' Means of astringent Plaisters, they tell you, that they found no Fault or Defect in the exterior Parts serving for Generation; whereby they give you to understand, that the Impotency, if there's any, not appearing outwardly, must remain within, in the Quality of the Blood, and in the Habit of Body. Lastly, to fulfil the Intention of the third Part of your Judgment, and to trace the Impotency by such Tokens and Footsteps as Madam de Gesvres had mark'd out in her Articles, they declare to you, that they cannot judge of the Consummation of the Marriage by a motionless Organization; because such Organization is ineffectual without two Principles, one of which is necessary for imparting Life to it, and the other for communicating to it Fecundity, (and when I speak of Fecundity, I do not mean actual Fecundity, but habitual and potential Fecundity.)

Now neither of these two Principles appearing in the Marquis's Person, the Searchers certify to you, that they could not supply them, tho' perhaps they might have supply'd the second had they met with the first; but finding neither the one nor the other, they could not supply any at all.

I WOULD fain know why in this Place they meddle with the Consummation, and the two Principles, unless it were literally and scrupulously to obey your Sentence? Being oblig'd to judge of Potency or Impotency, by the Tokens set down in my Articles, they consult those Articles. In examining them, they find therein but one single Sign of Impotency, which runs throughout the whole from the Beginning to the End; and this Sign is, Failure of Consummation: They therefore must speak of Consummation. They, at the same time, find this Failure, or rather this Negation of Consummation prov'd by the Absence of the two Principles. This brings them under

under a Necessity of explaining themselves concerning the Absence of those two Principles, and of grounding their Doubts upon not having seen either the one or the other; not but that the Presence of the one might have made the other be presum'd: but the Absence of both of them suffer'd neither of them to be presum'd.

HEREBY we fully clear them from the Reproach that's cast upon them, of carrying their Enquiry up to the actual Fact of Consummation, and to the Investigation of the two Principles.

THEY enquir'd into Consummation, not to judge of the Consummation it self, but of the Ability or Inability. They look'd upon the Consummation, or the Non-consummation, as a Light-house, or as a Path which was chalk'd out to them by the Articles in order to arrive at a Knowledge of the Capacity or Incapacity of the Person they were examining. It is a Stepping-stone, which they met with in the Structure of my Articles; a Stepping-stone upon which they stepp'd, not to rest there, but to mount higher and so to climb up to the Discovery of natural and habitual Impotency.

AND this appears by two irrefragable Reflections. One is, that they do not sound the Truth, or the Falsity of Consummation, any otherwise than by the Presence or Absence of the two Principles, the Existence whereof causes Potency, and the Privation thereof Impotency; so that they judge of the Act no otherwise than by Possibility, and consequently by the Potency. The other is, that towards the End of the Report they indeed intimate, that if they meddled with Consummation and the two Principles, it was not to judge whether the Marquis had actually consummated, and then to stop there: It was to judge whether he could and can again consummate. Therefore the Suspension of Judgment with which they conclude their Argument, falls not upon the
Question

Question, whether there has been Consummation, but whether the Marquis de Gesvres is able to perform the Duties of Marriage; that is to say, whether there is a Capacity in him.

Now let us come to the other Report, which tho' conceiv'd in Terms different from the former, follows much the same Method, and observes the same Order of Investigation.

The REPORT of the Sieurs Hequet and Chevalier.

We have observ'd, that all the Parts of the Marquis de Gesvres are of a fitting Consistence, Figure, Number, and Largeness, for performing the matrimonial Duties: But because all these Conditions are not sufficient for establishing Virility and Potency, without the Tokens of Erection, which we saw nothing of; we are of Opinion, that towards deciding whether he is capable of the matrimonial Duties, there should appear in him some Tokens of Motion; and because those very Tokens of Motion would not be of Force enough to ascertain the Consummation of Marriage, we are of Opinion, that it would be proper to visit the Body of Madam de Mascranny, Spouse of the said Marquis de Gesvres.

EVERY Word of this Report may be said to be drawn with an exquisite Prudence, and that the Report in it self is a Master-piece of Art, and done Workman-like.

IN order to satisfy the former Part of the Sentence, which deposes the Searchers to examine the Potency or Impotency, they don't at first, Gentlemen, speak to you of any thing but Virility, Potency, Capacity. But because all these Conditions are not sufficient for establishing Virility and Potency, &c. we are of Opinion that towards deciding whether he is capable of performing the matrimonial Duties, &c. Therefore it is the natural Capacity, the Potency, the marital Faculty, that they take upon themselves to judge of, and not of the Act or the Exercise of that Faculty.

TO perform the second Part of their Commission, and to inform the Official concerning the Quality of the Impotency, and to clear up the Doubt whether it was natural or accidental, Nature's Error, or the Blunder of a Quack, Coldness of the Blood, or Siccation of the Organs; they tell you, like the other Searchers, that they don't see any thing amiss in the exterior Surface; and thereby they give you to understand, that the Impotency, if there be any, must be occasion'd by an Irregularity of Nature, or some inward Defect.

LASTLY, To satisfy the third Part of the Sentence, which enjoin'd them to judge of the Impotency by the Signs and Footsteps which I had scor'd out in my Articles, they talk to you of Consummation; because Non consummation was the sole Token of Impotency, which I had charg'd; and because in charging Non-consummation, I did at the same time charge the Want or Privation of the two Principles, they again look out for Impotency by that Indication.

AND that is the Reason why they do not speak of Consummation till after they had mention'd the Absence of Motion, that is to say, the Absence of the grand Principle; a Principle which is never to be supply'd when it is not apparent, tho' its Presence, when it is apparent, may serve to supply that which may not be shewn.

GIVE me leave after this, Gentlemen, to unfold to you in two Words the Oeconomy of this Report. It first of all considers Virility and Potency *in abstracto*, so far forth as it may be separated from the Exercise or the Act; so far forth as it is a metaphysical Being; and then it considers it *in concreto*, so far forth as it acts physically, so far forth as it is put in Exercise, and by its Exercise gives Assurance of its Existence. By this 'tis visible, that their Search after Potency was the only Object the Reports propos'd to themselves.

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A farther Justification of the Searchers.

ANOTHER Reproach is cast upon them, which is, That you, Gentlemen, deputed them only to examine Fact, that is, whether Nature had competently organiz'd the Marquis. From whence they conclude, that the Organization appearing to them to be competent, it was none of their Business to dive into the Sufficiency or Insufficiency; and that such Sufficiency or Insufficiency was a Question not of Fact but Law, which the Official reserv'd to himself.

BUT what Answer shall we give to this wretched Quibble? Is the Cause of Monsieur de Gesvres of such Moment, that the greatest Men must thus lay aside and dethrone that sound Reason, which so justly has won them the Admiration of the Publick? Is it possible for such acute, such clear-sighted Wits not to perceive, that if Sufficiency or Insufficiency of Organization is a Question of Law, a Question within the Jurisdiction of an Official, there will no longer be any Question of Art?

WILL they make it a Question of Art, whether one and two make three, and whether the Measure of the Subject that is examin'd, be squar'd from the Standard instituted by Nature? A pleasant Art this! which will afford as many Masters as there are Men upon Earth.

It is therefore plain, that the Searchers Art is no otherwise necessary to the Judge, than for discovering the Sufficiency or Insufficiency of each particular Conformation. And surely, to make of this Sufficiency or Insufficiency a Question of Law, is the same thing as to say, that a Mason judges a Question of Law, when he declares that a Foundation of two Foot cannot bear a Building of 15 Toises. 'Tis loading the Profession of the Long-Robe with all the paltry Business of the Mechanicks; 'tis soiling it with
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all the Ordures of Medicine and Surgery, as if she had not in her Self Riches enough to keep her from envying the Arts or the Sciences which are beneath her.

LET us therefore say, and let no Man deny it, that our Searchers had a Right to cut off the Difficulty, whether Conformation was sufficient or not sufficient. Let it not be said that they decided unwisely when they determin'd for Insufficiency; for it is a Point demonstrated in my printed Answers, that the outward Figure of a Man never made a Man; and consequently 'tis a Point which I am no longer oblig'd to dwell upon.

THERE is one Observation, which I may yet add, that the more the Searchers talk of the advantageous Configuration of the Marquis, the more room they give us to believe it vicious and defective.

IT is undeniably true, and is confirm'd by the Experience of all Mankind, that the Difference between able Womens Men, and those that are frigid is this: In the former, the *Penis* is contracted and shrunk up, during the time that it does not actually stand; so that it is impossible to judge of its Length and Thickness, unless it is erect and stiff. Whereas 'tis quite the contrary in those that are frigid, as in the Carcass of a dead Man. For such indeed have a Pizzle, but it's never contracted or shrunk up; it has a continual Length and Thickness, (as in other Men when it stands,) but then it always hangs his Head and is incapable of a perfect or consistent Erection. See *Zachias* upon this Head, in the Chapter concerning the Tokens of Virility and Impotency.

THE next Thing they chide the Searchers for, is their having confirm'd their Doubts, by the Absence of a Token which may not be shewn without excluding ones self, as *St. Paul* says, from the Kingdom of Heaven. But besides that I have irrefragably confuted this Calumny in my Replication, I have upon this

this Head a new Apology to offer in Favour of each of the two Reports.

WHAT did the *Sieurs Gayant* and *Marechal* say more, than that the two Principles which ought to contribute to render Man's Configuration effectual, did not appear to them, and for that Reason, they could not judge as to the Consummation of Marriage? Does it follow from thence, that if they had seen the Tokens of the first Principle, they would likewise have insisted upon seeing those of the second. 'Tis plain they would not; and from their not presuming any thing, because they saw nothing, it does not follow, that if they had seen something, they might not have presum'd upon something which they might not have seen. If I find a young Tree in the Height of the Spring, without either Leaves or Blossoms, I think it dead: But if I see any Leaves, tho' no Blossoms, the Leaves give me Hopes that there will be Blossoms; because I find in it a Principle of Life, which seems to me to promise all the Effects of Life.

THUS, tho' I esteem him dead from the Absence of both Tokens, nothing would hinder me from believing him alive, if one of the Tokens were present. And this shews, that it is mere Madness to suppose that those Searchers meant to lead the Judges to any *Eclaircissement* upon the second Principle, which may not be produc'd without a Sin. All they meant to do was only this, We presume nothing because we see nothing.

As to the *Sieurs Hequet* and *Chevalier*, I don't see how the Marquis's Advocates can justly accuse them with grounding their Doubts upon the Absence of the second Principle; for throughout their whole Report, there is not the least Mention made of that Principle, neither expressly, nor implicitly; neither in plain Terms, nor in equivalent Terms.

INDEED,

INDEED, after they had said, that in order to judge whether the Marquis de Gesvres is capable of performing the Marriage Duties, he must shew some Tokens of Motion: They add, that those very Tokens would not be sufficient to ascertain Consummation; and from thence they conclude, that they must proceed to the Inspection which we offer.

BUT what can the Marquis's Advocates conclude from thence, more than that our Searchers knew from Experience, that the Tokens of Motion did not always infallibly warrant Potency. But that we may consult Modesty, we shall deliver in *Latin* the Result due of what we have to say concerning this present Dispute, about the virile Efficacy.

It has been observ'd by all who have written concerning Impotency, as well Canonists as Physicians, that there are many Men whose *Penis* very readily rises, nay, lifts it self up in a most proud and ostentatious Manner; but then it's Fury is as soon spent; like a Fire made of Straw, the Moment it approaches its Mistress's Door, it basely falls down at the very Threshold, and piteously vomits out its frothy Soul, alluding to that Verse of *Tibullus*,

Janna difficilis Domina te verberet imber.

These Kinds of Impotents are not rare nor unfrequent. *Hostiensis* queries whether they are to be rank'd among the Frigid, since their Vice proceeds not from the Frigidity, but rather too much Calidity of their Blood. Of this Sort of Infirmary, we have a noted Instance in the Baron du Pont, mention'd by *Argentraus*.

THIS Lord was separated from his Wife *Catharine de Parthenay*, Heiress of *Soubize*, for Impotency. *Argentraus*, in the Article 329 of the Custom of *Bretagne*, gives this Description of his Impotency: *Quidam juvenis valenti corpore uxorem inire non poterat.*

prosi bene nasutus, sed simul ac nervum admovebat, semen precipitatâ festinatione ejiciebat, ita ut nihil intrâ injiceret, nec intrmittere posset genitale. He was a young Man, of a hale Constitution, but cou'd not enter his Wife's Body, tho' rarely well hung; but so soon as he approach'd her with his *Penis*, his *Semen* flew off with such Precipitation, that she was not at all the better for it, nor could his Label of Mortality make its Way into Love's Paradise.

BE that as it will, our Searchers warn us not to trust to the Stiffness of the virile Organ; there being in many an erecitive Force, but not effective, because not solid, sober, and strong enough to hold to the End; and therefore we must always consult the Wife's Person, if we would know what has been done by the Man, whether at first Sight he appears to be a Man, or whether he does not. For tho' he appears to be a Man, he is not presently to be concluded such, because there are some whose Ensign of Manhood is a mere Cheat, gives mighty Hopes, but performs nothing. Again, tho' he does not appear a Man, it does not follow, that he's not a Man; because the Tokens of Manhood do sometimes lye hid, and sometimes pop out. And therefore, by inspecting the Husband, no certain Judgment can be made either for or against Virility; but by inspecting the Wife, both Doubts are remov'd. For if in the Wife, the Seal of Virginity appears to be broke, it is most certain, both that the Husband has Vigour, and an efficacious Vigour: But if the Seals remain whole and unhurt, there is, say the Canons, a certain and violent Suspicion, that the Vigour of the Man, if it did exert it self, was fallacious; and if it did not exert it self, then there was the same Suspicion that Nature had deny'd him it. And this Suspicion, tho' presumptive, has the Force of an undoubted Proof, since the Canons rely thereon, as appears by Chapter *Proposuiti*, Chapter *Littera*, and by all the Doctors, to a Man.

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AND

AND here, Gentlemen, pray observe how like Fools our Adversaries shoot their Bolts at the Searchers, for saying they want to be satisfy'd, by inspecting the Wife, whether or no she has had the Oil of Marjoram emitted into her. O monstrous! (say they) is such a Thing possible to be explor'd! Not considering the Searchers only Aim is, to know whether that Vigour which they did not perceive the least Glimpse of in the Marquis de Gesvres, might not some time or other have favour'd him with its Presence; for since they could not from a present Deadness infer a perpetual Deadness; nor, as the Marquis says himself, conclude because it was not erect, that therefore it was not erigible, they very rightly judg'd, that from so long and so insignificant a Condormition Inerigibility did certainly follow, which is the very Argument of *Proposuit*.

IN the next Place I hear them tell me, 'tis my arguing *à non actu ad non posse*; 'tis inferring Inability from the non-acting, from the Failure of Exercise tho' in Logick 'tis certain, that if the Argument *à non actu ad non posse* is good, then *à non actu ad non posse* is good for nothing. To them who talk at this Rate, might make Answer, That if they think the Consequence to be wrong, they must not lay the Fault either on me, or the Searchers, but on the Decision of the Doctors, and the Practice of the Church. For those Decisions, that Doctrine and Practice, have no other Foundation, than that very Argument which they condemn for Absurdity; it being manifest, that the Search after Virginity would be a Madness, if at this Point the Consequence were not good *à non actu ad non posse*; and it is certain, tho' I should abide by that, the Objection would nevertheless be invincible and destroy'd.

BUT because we are now handling a Controversy upon which every Man thinks himself a competent Judge, we will satisfy, as far as we can, those that

have an equitable Disposition, and shew them, that our Canons too have their Logick, not a collegiate, pedantick Logick indeed ; but a Logick of Legislators and sage Politicians ; such as is fitting for the Rulers of the World to have.

THERE is this Difference between a Legislator and a Philosopher * ; the Legislator is to accommodate his Rules to the Practick, and consequently must bend them according to the Exigencies of Mankind. The Philosopher on the contrary, who applies himself to the Search of Truths purely speculative, must make to himself such Rules as may direct him to the Knowledge of those Truths ; and those Rules are to be as
immu-

* *This is an Answer to a whimsical Conceit of the Marquis's Advocates, who pretend that in former Ages the Church used not to break the Marriage-Bonds of Impotents any otherwise than provisionally ; and that therefore it was not necessary for the Proofs to be so very home : But that since the Decree of Langey, the Dissolution of Marriage, on account of Impotency, is become definitive ; and therefore (say they) the Proofs of Impotency must now be demonstrative.*

We forbore to take Notice of this unaccountable Notion, because we did not think it worthy of any Regard ; but since the Marquis de Gesvres's Orator has made our Silence a Matter of Triumph to himself ; and because the Writer who follows him Step by Step, and hardly does any more than translate him ; would not fail to raise upon it mighty Trophies, we thought it adviseable to add a Note in order to dissipate this Chimera.

Dissolutions of Marriage on account of Impotency, have in no Time heretofore been provisional, they were always final ; because the Church in all Ages supposed, that he whose Marriage was dissolved by her for Impotency, was irreparably impotent ; and so she was far from loosing them provisionally.

immutable as the very Truths he seeks after. This last applies himself to know what exists, what actually is in Being; the other what is applicable, what may be. And this is the Reason why the one is oblig'd to stop, when he is got to the ultimate Period of Possibility; but the other is not to stand still till he has attain'd, or is out of Hopes of attaining the Certainty which he is in Pursuit of.

THIS Difference of the Object occasions that the same Argument, which would be good for nothing with the Philosopher, is an excellent good one with the Legislator, or, (which is the same thing) with the Judge who walks in the Path which the Legislator has mark'd out to him.

THUS

It is true, when it could be made appear to her that she was deceiv'd, and that she had taken for an Impotent, one that was not so; she judg'd that in that Case her Error could not hurt the Indissolubility of the Sacrament. And this gave Occasion to the Maxim of the Canonists, Sententia in Causa Matrimoniali lata, nunquam transit in rem judicatam. But in the first Place, 'tis very improper to say, that that Judgment is provisional, which, tho' definitive, is subject to an erroneous Proposition. In the second Place, the Maxim above-cited is as true now as it was at any Time heretofore; and a Man must be delirious to think that it was abolish'd in the Decree of Languey. The S^{ieur} de Languey being loos'd from his Marriage with his first Wife for Impotency, marries a second by whom he has seven Children. After the Death of the first, he sues to have that Decree revers'd, which had dissolved his first Marriage, and pleads his having seven Children; his Suit however is reject'd, and that Decree instead of being revers'd, is confirm'd. Does it follow from hence, that the Parliament establish'd it for a Rule that the Decrees dissolutive of Marriage should, like all others, have the Force of an adjudged Point? No, doubtless.

the Lady de MASCRANNY. 245

THUS, tho' the Argument *à non actu ad non posse*, has no Admittance in Philosophy, it does not follow that it may not be conclusive in the Law; nay, it does not follow but that 'tis really conclusive whenever 'tis impossible to hit upon any other that may have a stronger Foundation.

I SHALL be undoubtedly told, that even in Matters which are not within the Province of Philosophy, in moral Matters, in short, in Point of Conversation, nobody ever concluded, *à non actu ad non posse*; for Example, (they'll say) a Man would be laugh'd at, should he argue thus, *such a Man does not marry, therefore he cannot marry*. I answer, That we must distinguish between contingent Acts, which depend upon Humour alone, Acts which a Man is free to do or not

to

lest, the Court intended no such Thing. All that can be infer'd from that Decree is, that the Court did not think they ought to re-establish a Marriage contracted with a Woman already dead, to vacate the second Marriage contracted during the Life of the first Wife; and consequently to prejudice the Fortune of the seven Children, who were the Issue of the second Bed. We may likewise infer from the Decree, that the Court did not look upon the Birth of those seven Children to be a good Proof of Erroneousness in the first Judgment which had declar'd the Father impotent; undoubtedly because the same Husband might have been impotent to his first Wife, without being so to his second. And as on these Occasions, every Thing is used to be presum'd, that is possible to be presum'd; the Rule would have it, that this relative Impotency, which is so common, should be presum'd in Favour of the Children's Fortune and Condition. But this does not at all affect the Maxim, *Sententia matrimonialis non transit in rem iudicatam*. This Maxim has always been in Force; the only Difficulty is to prove the Erroneousness, which is very rarely possible.

to do, and Acts that are not contingent, that is to say, Acts which are connected with a Step already taken, Acts which are consequent to and dependent upon that Step, Acts, in short, which a Man is not fully at Liberty to do or not to do.

TO marry is a contingent Act, an Act which depends upon Man's Free-Will, an Act which we may be led to, or diverted from, by a thousand fortuitous Causes, and by the Concurrence of a thousand Hazards. Impotency is but one of a thousand Causes that may make a Man keep himself a Batchelor, and consequently 'twould be great Presumption to impute Celibacy to Impotency; 'twould be flattering one's self that we had guess'd the true Cause among a Thousand.

BUT when once a Man is married, is the Performance of the Conjugal Duty a contingent Act? No surely.

A HUSBAND'S Duty is so interwoven with a Husband's Condition, that he is not at Liberty to omit it; the Husband is forced to it, if not by a Physical Necessity, at least by a Necessity of Duty, by a moral Necessity.

AND therefore, when a Husband does not discharge his Marriage-Duty, there is at least a Certainty that he cannot discharge it; a Certainty so much the stronger (in the Eye of the Church) for being grounded upon that Rule of the Apostle; *Vir uxori debitum reddat, similiter & uxor viro*; Let the Husband render his Wife due Benevolence; and likewise the Wife the Husband; grounded likewise upon the general Constitution of Man, upon the Course of Nature, and upon Experience, or rather upon the invincible Inclination of one Sex towards the other.

FOR as the said Inclination operates upon all who are capable of feeling it, it follows that they, in whom it does not operate, ought to be reckon'd incapable of that Feeling.

THERE-

THEREFORE, the Duty of a Husband not being a contingent Act, we may very well argue *a non actu ad non posse*.

IF there have been some very rare Examples, certain Prodigies of human Vanity, or certain Miracles of Grace, who have mortify'd the Flesh, and deaden'd the Force of natural Inclination, and could in one and the same Subjects reconcile Ability and Contingency together; I answer in the Words of the Law: ** Quæ bis aut semel contingunt, prætereunt Legislatores*; Lawgivers neglect Cases that happen but once or twice.

WITH Law-makers, Events that border upon Prodigy go for nothing; for otherwise, there would be no Certainty in any thing, if People might be allow'd to say, *Such a Miracle might happen, such a Prodigy might come to pass*.

WOULD you know how the greatest Men for Sense and Learning argue upon the very Thing now before us?

LET us for Example hear the great *Argentæus*, whose excellent Judgment and extensive Learning will undoubtedly be deny'd by no Man.

THIS great Man, in the Place I before quoted, recites a Question which was risen relating to an Impotency like that of the Baron *du Pont*'s. The Wife, upon Inspection, was found to be a Virgin; and yet in her Husband's Person there were found such Presumptions of Potency, as did not in the least appear in the Marquis *de Gesvres*. The Wife was perpetually challenging him to the Congress; but the Husband as often declin'd, and took no other Course to clear himself but by running away. Upon this, a Sentence pass'd, ordering both of them to be inspected a-new: But in both the one and the other, the Parts are again

* It is a Greek Law in the Text de Legibus.

found to be *valentes & integra*, valid and untouch'd ; *valentes* in the Husband, *integra* in the Wife. In the end, the Husband not only grants that he is impotent, but likewise agrees in the Character and Description which his Wife had given of his Impotency, which was this ; *Erigere quidem illum & nervum tendere, sed cum admovisset sinum sinui, præcipitatâ festinatione sic semen emittere, ut nequid emitti posset, ac ne intromitti quidem colon posse.* Her Husband's Thing did stand, and was stiff enough ; but so soon as he had touch'd her Body, he let fly his Seed, so that none of it cou'd go into her Womb, neither cou'd his Thing possibly make its Way into it.

THE Physicians being of Opinion that the Impotency might be remedy'd, agree, that when the Spring came on, they would apply proper Medicaments thereto : But in the mean while the Husband dies, and the Wife demands her Dowry, and her Matrimonial Stipulations : This gives Occasion to revive the Question about Impotency, because the Dowry and Stipulations did imply a Marriage, and the Marriage imply'd a potent Husband. And so the Question was (after the Husband's Death) whether he was potent during his Life. Now observe how *Argentæus* argues upon the Case : The Hopes of the Cure which the Physicians had promis'd, he looks upon as nothing at all, because he does not think that we can be sure of any thing till we see it. Then putting together the Circumstances of the Cause, the Husband's shunning the Congress, his Youthfulness, his hale Constitution, the Care his Wife took to blow up a Fire, which would not have fail'd to have kindled in him, if there had been any left, the Ineffectualness of all her Cares, and a Maidenhead which had escaped so many Attacks ; having (I say) put all these Things together, he concludes, that a Man must be a very *Als* to doubt of the Impotency, *In viri dissimulatione, cum procrastinaretur, cum diem distenderet, ille interim firmâ*

*formâ valetudine, atate incendente, fœmina ipsa omnes delicias intendente, vegeto corpore, æstuantî sanguine, mellitis colloquiis, cum illa nuda nudo accubaret, saxum interim, & Zenocrate magis lapideus, nihil præstaret, quis hic tam stupidus esset, qui hic dubitaret esse, quod in naturâ vitium offendisset? quis adhuc testimonia erat desideraturus? hac vero non tam indicia sunt, quam in-
victa probationes.*

THU s do wise Men argue: Thus do they call by the Name of infallible, insurmountable Proofs, that which Men without Principle will not own for any Proofs at all: So true it is, that to judge of the Forcibleness of a Proof, it is not enough for a Man to be endu'd with Sense and Reason alone, he must have some Knowledge of the Law, he must know what constitutes the Certainty of a judiciary Proof, and to what Degree such Certainty may extend. Otherwise, as many Judges, so many Pyrrhonists, and consequently so many Persons incapable of being Judges.

CONCLUSION.

NOW, Gentlemen, you see that our Searchers, especially the latter, have discreetly executed what you discreetly order'd. You see, that without turning aside either to the Right or the Left, they have follow'd the Line which you chalk'd out to them; they have given you to understand, that when a Man's Ability is in Dispute, there are but two Ways to clear up the Doubt, namely, to examine whether the Causes of Ability reside in the Man, and in the Woman the Effects.

A SUPERB and Pompous Appearance of Ability is oftentimes fallacious and deceitful. But Persons who can afford no such Shew, are justly to be distrusted. The former do indeed give Grounds of Hope, but so do they likewise of Fear: The latter give Grounds to fear every Thing, and to hope but little: But neither of them furnish the Certainty that may be acquir'd. Such Certainty is not acquir'd, but by examining the Effects, which are seated in the Person of the Wife.

NOTHING is more clear nor more certain, than this Way of Reasoning; for when the Effects appear, we can no longer doubt either the Existence or the Efficacy of the Cause; as, on the contrary, when they do not appear, we may reasonably conclude, either that the Cause does not exist at all, or that if it does exist, it is utterly ineffectual. A Conclusion which at least carries with it a moral Certainty, and a Judge can do no more.

OUR Searchers having only examin'd the Subject in whom the Cause of Ability should reside, they could not possibly come to a Determination, they could not finish their Reports. And yet I dare say, Gentlemen, you will not, without a finish'd Report, take upon you to decide a Cause of this Quality.

THE Searchers therefore must be put in a Way of finishing it. They must have a farther Insight into Matters. They must have it in their Power to confront the Effects with the Cause, the passive Subject in whom those Effects should appear, with the Agent in whom the Cause ought to have appear'd. In a Word, since they cannot judge of the Cause in it self, they must be enabled to decide it by its Effects.

BEAR with me, Gentlemen, a little longer, and let me observe to you, that every one of those Presumptions, which determin'd Argentram to declare the

the Husband above-mention'd Impotent, do likewise concur against the Marquis *de Gesvres*.

THE former fled from the Congress, *procrastinatus, diem distendebat*: The Marquis *de Gesvres*, with his utmost Endeavours, opposes the Inspection of his Wife, in whom, if we are to credit his Answers, there can remain no manner of Token of Virginity; in whom there's not a Fibre nor a Membrane, but what, if he says true, must loudly proclaim the Consummation of Marriage. The Marquis not only withstands his Wife's Visitation, but he fears to be visited himself a second Time, and gives you plainly to understand as much by his printed Memorial.

THE Husband, who is spoken of by *Argentæus*, was in the Vigor of his Age, *etate incendente*; so is the Marquis *de Gesvres*.

ARGENTRÆUS's Man, except as to Impotency, was of a sound Constitution, *valenti corpore*: The Marquis *de Gesvres* is so far from being Impotent through Sickness of Constitution, that he cracks of his good Habit of Body.

ARGENTRÆUS's Man had, without Emotion, pass'd through many Condormitions, and withstood all the Temptations thereof; the Marquis *de Gesvres* has done as much. Why therefore may not we conclude with *Argentæus*, *Quis tam stupidus esset, qui in natura vitium non offenderet? Quis adhuc testimonia desideraturus est? Hæc vero non tam sunt indicia quam invidiæ probationes.* Who so stupid as not to see Nature faulty in this Case?

I WOULD not have you judge of these Presumptions so advantageously as *Argentæus* judges of them. I would not have you take this Concurrence of Circumstances for any Thing but a Heap of Prejudices. I would not have you reckon for any Thing; the Judgment of the Court, City, Country, who upon reading only the Interrogatories and the Marquis's

Memo-

Memorial, are convinc'd of the Impotency of that young Lord. In short, I would have you set aside the Impossibility that there is for a young Lady to conceive, execute, and accomplish the impious and extravagant Enterprize of escaping from the Bonds of Marriage by a Loop-hole so impracticable, as is a false Accusation of Impotency; the Impossibility that there is for this Lady to flatter her self, that her Husband (were he a true Husband) might not however be able to prove himself so to the Searchers; and, which is more, the Impossibility that there is for her to flatter her self with restoring in her Body the Tokens of Virginity, nay, to restore them with so much Art as to deceive Art it self. In short, the Impossibility that she could hope to go through with her Imposture against that terrible Appearance of Authority and Power, without which the Marquis's Cause dare not shew it self. Once again, I would have all these Impossibilities reckon'd for nothing, or at least I would have you look upon them as no other than Considerations fitter to enlighten the Eyes of the Man, than to illuminate those of the Judge: But at the least the Man sees, and all our Business at present, is, to put the Judge in a Way of seeing. Now to put him in that Way, you need only take but one Step, you need do no more than admit my Proof; it is a juridical and canonical Proof, a Proof fram'd for the Instruction of the Judge; in short, a Proof from whence (the Judge's Eyes concurring with the Man's) there will issue a Work of Justice, which will restore to a Sacrament its Dignity, and to my Client Peace of Mind, *Et erit opus Justitia pax.*

Now, if my Client should be so unfortunate as to be excluded from this Proof; if you shut up this sole Sky-Light, this single Opening, through which the Sun may enter, what would be the Consequence, Gentlemen? (I tremble to think on't, but I must speak

(speak it:) The Marquis's Impotency, tho' manifest to the Eyes of the Man, would remain invisible to the Eyes of the Judge. And because the Church holds it for a Rule, to judge of nothing but what it sees, she would be constrain'd, tho' with Reluctance, to leave in Force a fatal Bond, because of the Impossibility she would put herself under of perceiving the Seam by which it is dissoluble, or rather, by which it is no Bond; and then an imperious Law would force her to launch her Thunder and her Censures, to constrain my Client to rejoin herself to a Husband whom she knows to be an Impotent; to enjoin her, I say, to become the May-game, and, what is worse, the Bait of those sinful Ebullitions, which startle Nature, and which we hardly dare so much as think of.

BUT yet, on the other hand, a Law still more imperious, namely, the Divine Law, would withhold my Client from yielding to those sacrilegious Extravagancies; and then, according to the Canons, she would have no other Course to take, but humbly to bear the *Opprobrium* of Excommunication, the Privation of the Sacraments, the Excision from the Body of the Church, with all the other Effects of the Spiritual Sword.

I VERY well know, that she would have Matter of Consolation in the Eye of God; I very well know, that she would be in the Number of those who are spoken of by St. Jerome in the Canon, *Si quis non recto. Sunt qui foras mittuntur & tamen intus manent*. They are turn'd out, but yet they remain within; they make no longer any Part of the Body of the visible Church, but still they are Members, nay, the most valuable of that invisible Church which is seen by God alone. I likewise very well know, that it is in Relation to the faithful Souls, reduc'd to this sad Condition, that St. Austin us'd this glorious
Expres-

Expression, *Hoc coronat in occulto Pater, in occulto videns*, He who sees in Secret, crowns them. But you will grant me, Gentlemen, that a Holy and Christian Soul cannot be in a more deplorable Case, than that of being forc'd to disobey the Church, if it will obey God, or to disobey God, if it will obey the Church. And therefore I trust, that your Conscience and Wisdom will incline you to make use of all the juridical Expedients that may possibly exempt you from reducing my Client to the cruel Necessity of so unhappy a Choice.

I therefore pray, that my Client may be visited by Matrons, agreed to on both Sides, or else nam'd by your selves for that Purpose; which Visitation shall be perform'd in the Presence of the Searchers who inspect the Marquis; and according to the Report, you will order, as in Reason should be order'd, and the Marquis be condemn'd in Costs.

M. BEGON, Counsellor.

FOULON, Proctor.

BENARD, Attorney.

Second.

Second REPLICATION

For Madam DE GESVRES,

Against the Marquis DE GESVRES.

GENTLEMEN,

I HAVE given more Attention to my Brother's Plea than he imagines; and he shall see that I have so by very good Tokens. I shall answer three of his Propositions.

FIRST, he says, That we are not to wonder, that moral Certainty is sufficient in criminal Matters; that that which renders it sufficient, is a written Body of Law as to Offences; but that it is not so in Cases of Impotency; that Impotency is an Offence of Nature; 'tis a secret Delinquency; a Delinquency upon which no real and sensible Certainty can arise, unless it be when Nature has err'd in the Regularity of the Conformation.

SECONDLY, he says, That we ought not to be surpriz'd, if in the four Examples which we have cited, the Proof of Virginity has been admitted since the Abolition of the Congress; that that which caus'd the Inspection of the Wife to be admitted on those four Occasions, was the Consent of the Husband; and when a Husband is so indifferent as to what concerns his Wife's Modesty, and is so little tender of her Honour, as to give her up to the Searchers, nothing then hinders the Secret of Virginity from being examin'd into.

THIRDLY, he says, We were in the wrong to look upon the Inspection of the Wife to be the sole Canonical Proof; for that there are several others
establish'd

establiſh'd by the Laws of the Church; as for Example, the Triennial Cohabitation, which is a Proof not to be deſpis'd.

Confutation of the firſt Propoſition,

That moral Proofs, or which is the ſame thing, Probabilities, do ſuffice in a criminal Matter, for no other Reason but becauſe there is a written, eſtabliſh'd Body or Book of Delinquencies.

THIS Propoſition is coin'd purely to ſhake the Diſtinction which I had eſtabliſh'd in my general Answer, between phyſical Certainty, neceſſary to a Speculative Philoſopher; demonſtrative Certainty, neceſſary to a Geometrician; and moral Certainty, ſufficient for a Judge.

THIS Diſtinction being the Baſis of my whole Argument, you will give me leave, Gentlemen, before I proceed thereto, to make you ſenſible of it by ſome new Examples; which will not be foreign to the Matter in hand, and will not a little contribute to give freſh Light thereto.

A PHYSICIAN, who, to amuſe himſelf at his Leiſure, ſhall contemplate the Proceedings of Nature, ſhall take it in his Head, that ſhe has within herſelf wherewithal to repair the Tokens of Virginity after they are effac'd: He ſhall make a System thereupon; he ſhall mark out all the Rout which Nature is to follow, the Point from whence ſhe is to ſet out, the Places where ſhe muſt ſtop, the Operations ſhe is to perform in each Place where ſhe tarries, and at laſt, the ultimate Period of her Courſe; and from all this
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he shall make you a new Maidenhead so like to the former, that it shall puzzle the skilfullest Judges to find out the Difference. Bring this Physician into the School, and there let him stand out to dispute; he will stoutly maintain, (upon the Credit of his Idea,) that the Tokens of Virginitie are uncertain; and why should he not maintain it? Can any Paradox be improbable to him, who sets up to be a Guide of Nature, and who pretends to make her walk in the Paths he traces out to her? *Aristotle* thought nothing more conclusive than this *Enthymem*, *Lac habet, ergo peperit*; She has Milk, therefore she had a Child; and yet the Modern * Physicians have found a Way to bring Milk into the Breasts of Virgins, and so the *Enthymem* is no longer good for any thing. But where does it cease to be good? In the Warmth of a Dispute, in the Contradiction of a Thesis, and, to be short, in the Tumult of a School; for in the Practice, and in the Science of the Searchers, it is still conclusive. And this occasions the Difference that is observ'd to be between an Author-Physician, *i. e.* a Disputant-Physician, and a Practising-Physician, *alias*, a Searcher. The first doubts of every thing, while the second doubts of nothing. Why this Pyrrhonism of the one, and this Dogmatism of the other? The first seeks not so much what Nature does, as what she may do; whereas the second minds not so much what she may do, as what she really does do: The first may always doubt, because he contemplates; the second cannot doubt, otherwise than as it is necessary to come at a Decision, because his Business is to decide. To conclude, the first takes for his Guide his own Ideas, which form nothing but a Heap of Doubts; and on the contrary, the second takes for his Guide Experience, which

* *Zachias de Signis Virginitatis. Ambrose Pareius, in his Treat of Reports.*

hardly leaves any Doubt at all; I say hardly, for I do not pretend that Experience is infallible; for if it was, it would afford a physical Proof, and we should have no need of moral Certainty.

WHAT's the Reason, why the Certainty of the Tokens of Virginity is not a physical Certainty? Because, in the Opinion of several learned Men, Nature may act contrary to her ordinary Course. What's the Reason why, notwithstanding such Possibility, the Certainty is however moral? Because tho' Nature may act by the Rule of Contraries, yet she does not act so; and this is what reconciles the speculative Uncertainty of the Tokens of Virginity taught by some Books, with the practical Certainty of those same Tokens, as we find it in the Practice of the experienc'd Physicians. Books of Speculation tell you those Signs are uncertain, because Nature may play Tricks. Practitioners tell you, those Signs are certain, either because such Possibility of Trick-playing is perhaps a Dream; or supposing it to be no Dream, it is at least a very rare thing for Nature to walk in those extraordinary Paths which Mens Imaginations trace out to her; and the Rarity of such an Event is sufficient to raise in us a moral Certainty, as such moral Certainty is sufficient for a Man to judge of all Sorts of Questions, not excepting even such as concern the Life, Honour, and Fortune of private Men.

THIS is not to be wonder'd at, say they, in criminal Processes, because there's always in Being a Book of declar'd Delinquencies. A wonderful pretty Answer this! Does the Certainty of the Book of Delinquencies give the Judge any Certainty towards convicting the Party arraign'd? A dead Body is found pierc'd through and through with several Wounds. 'Tis true, there is then a physical Certainty of a Crime committed; but that it was committed either by the Party accus'd, or by another, is what
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the Judge cannot be assur'd of, but by a moral Certainty, by Probabilities, by Conjectures. And this physical Certainty, which is had as to the Perpetration of the Crime, does never yield a physical Certainty, as to the Author of it.

LET us go farther : If it be true, as our Adversary pretends, that it is the Certainty of the Book of Delinquencies, which in criminal Affairs gives the Force to moral Proofs, let us see if there can remain any room for this Kind of Proof, and whether or no, to restrain the Usage of them to one single Case, where the Delinquency is certain, be not to exclude them from the greater Part of Judgments. Indeed, if we except Murther, burning of Houses, and some other Crimes, which leave behind them visible Traces, we shall not find any wherein the Book of Delinquencies may be said to be clear and manifest.

* SHALL we, for Example, find a Book of plain Delinquencies in the Case of Adultery, Incest, and such abominable Enormities of Uncleanness, which divine and human Laws punish with Fire? Do we find any such thing in the Case of Usury, Simony, slow Poison, &c.? We find so little thereof in this last Case, that Physick it self confesses she knows not what Judgment to make thereof; and 'tis one of the most contested Questions among the Professors of that Art, *Utrum judicari possit an quis necatus sit veneno dato, vel mortuus veneno innato?* Whether it can be sufficiently prov'd, that a Person has been poison'd?

WE cannot therefore, according to the new Principle of the Marquis's Advocates, in any of the above Cases, trust to moral Certainty, because the Book of Delinquencies is not flagrantly clear. We must, if we would try them, stay till physical Certainty drops from Heaven; and by this Means, an infinite Num-

* This Question is handled at large in Zachias.

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ber of Crimes would go unpunish'd. This therefore plainly shews, that the Certainty of the Body of Delinquencies is not what gives an Authority to moral Proofs in criminal Affairs; the only thing which authorizes them, the only thing which gives them their Force, is on the one Side a Necessity of Tryals, and on the other an Impossibility of finding Proofs of any other Sort, or, which is the same thing, an Impossibility of attaining to a superior Degree of Certainty. Now, this Necessity and this Impossibility do both meet in Questions of Impotency; therefore there is a Principle for deciding them upon bare moral Proofs.

IN vain do they deny to us the Necessity of sifting Questions of Impotency; in vain do they tell us, that in such Processes the Business in hand is not to make Examples in *terrorem*, or to provide for the publick Safety: All this is no where true, but in the new School of Theology, erected by the Marquis's Favourers. And indeed, since the fundamental Principle of that School is, that the Marriage of an Impotent has nothing to distinguish it from the Marriage of any other Person, we are not to wonder, if therein they call Questions of Impotency vain Amusements and empty Follies. Nay, we ought rather to admire why they don't treat such Questions with the Appellation of impious and sacrilegious Attempts; for that is the Name which those Sectaries ought to give them, if they would be consistent with their Principles.

BUT as this same School is so empty and thin, that it does not deserve to have its Doctrine taken notice of; it will be always true, both that the Church is as much concern'd in clearing up an Impotency, as the State in enquiring after Crimes; and consequently, that the Church is oblig'd to threaten, to strike, to punish, either to secure the Sacrament from Prophanation, or to preserve Christian Souls from that Inundation of brutal Impurities, which
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the Marriages of Impotents bring along with them.

WE must go farther; and since our Adversaries are insensible to every thing but earthly Impressions and worldly Ideas, it is indubitably certain, that even the Interest of the civil Society requires, that the Church should on these Occasions make Use of the Authority left her by Jesus Christ. For who doubts that the Marriage of an Impotent carries Treason with it, nay, an enormous Treason; a Treason which is as hurtful to the Security, as it is to the Sanctity of Matrimony? Who doubts that this Perfidy corrupts the Consent, which serves as Matter to the Sacrament? And who doubts that the Matter of a Sacrament being once corrupted, it is impossible for the Sacrament to be form'd? If this be so, here's a young Woman abus'd, a Father and a Mother cheated; this Woman is involv'd in the Abuse of Marriage without being marry'd; she is become a Concubine to a Statue; and would to God it were no worse than a Statue! Here, I say, is an unfortunate Woman deliver'd up to the Horror of a Fire which consumes without burning, and which never dies, because it is always dead.

Now after this, let them tell me, if it is not for the publick Good to have so cruel a Fraud suppress'd; let them tell me, if there's any Crime that does more essentially violate Society; and if it is not destroying the publick Safety, to leave so great a Mischief unprovided of a Remedy. But I have said more than enough against the first of the three Propositions which I undertook to confute.

WE will now proceed to the second, and make it appear, that if the Church has continu'd, since the Abolition of the Congress, to inspect the Wife to come at the Husband's Impotency, she never thought her self oblig'd to wait for the Husband's Consent in the Use of this Proof.

BUT

BUT first let us run back to the Source of this Error, and see what it was that gave Occasion to our Adversaries to frame such a Paradox.

Confutation of the second Proposition :

That since the Abolition of the Congress, the Inspection of the Wife was never order'd but when the Husband was consenting thereto.

THE Marquis *de Gesvres's* Advocates have fancy'd, that the Inspection of the Wife, which was practis'd during the Time of the Congress, was nothing but a Preparative, or a Concomitant of that scandalous Scene which was play'd in those Days. From thence they have concluded, that the Abolition of the Congress carry'd along with it that of the Inspection; and because they were shewn by a great Number of Examples, that after the Congress was abolish'd, the Practice of Inspection was continu'd, they endeavour'd to salve it by an Evasion, namely, by pretending that in the particular Cases offer'd for Precedents, the Husbands were always consenting to the Inspection of their Wives. Prodigious! (said they) that those Husbands should suffer such an Injury! They were consenting to it, *volenti non fit injuria*.

AT present therefore we are to enquire, whether it be true that such Consent of the Husband's was ask'd; whether it be true, that such Consent was given, and whether without it the Proof would have been unlawful and injurious.

BUT before we enter into the particular Discussion of each Example, let us lay open the Fallaciousness of

of the Principle; and since they attack our Precedents merely by supposing, that the Inspection having been condemn'd as a Concomitant of the Congress, it was no longer lawful to make use of it without the Husband's Consent; we will make appear how false an Allegation it is to say, that the Inspection which we demand was ever dependant upon the Congress, or that the Condemnation of the one imported that of the other.

In the first place, there's no need to observe, that the Inspection of the Wife being a much older Proof than the Congress; 'tis impossible it should have been invented to serve any Turn of the Congress: This is what every Body knows very well. But there's one thing which every Body does not know, and yet 'tis necessary they should, in order to take away the Quibble; namely, that in the Time of the Congress the Wife went through three different Inspections, which had each their particular and distinguish'd Object.

* A T first, the Husband and Wife were visited in one and the same Day: The Wife after the Husband. And this first Visitation had for its Aim the Enquiry after Virginity: For ‡ if the Wife did not prove to be a Virgin, she lost her Cause without any farther Examination, unless the Husband, out of a Bravado, would stand the Congress, as the *Sieur de Langey* did. If || on the contrary, the Wife upon the Visitation prov'd

* Tagereau, fol. 81.

‡ What is here said, is so certain, that the Wife who was marry'd, when a Widow, to an Impotent, did not use to undergo this first Visitation. Tagereau, fol. 111.

|| What is here said of the *Sieur de Langey*, as likewise what was said of him in the general Answer, was extract'd out of the *Journal de Palais*, or the learned and

prov'd to be a Virgin, the Husband had no Relief but by the Congress; and if he refus'd to stand it, he was, *ipso facto*, adjudg'd impotent ||.

Of the two other Inspections which the Wife underwent, the one preceded, the other immediately follow'd the Act of the Congress; and the Intent of these was to let the Searchers know, whether the intermediate Congress had wrought any Alteration in the Person of the Wife. As to these two last Inspections, Widows were subject to them as well as others. Now 'tis these, and none but these, that may be said to be Concomitants or Dependants of the Congress; and so they vanish'd with the Congress. But as for the first, which was no more than the Practice of the Decretal *Proposuiti*; it had so little Affinity with the Congress, that as it was customary before the Congress was introduc'd, so did it continue after the Congress was destroy'd.

and eloquent Pleadings of the Attorney General Lamoignon, whose Manuscript Copies are abroad in several Persons Hands.

What was likewise said of the Sieur d'Argenton, in the aforesaid general Answer, was borrow'd from the last Chapter of Rouillard's Reliefs Forenses, who pleaded the Cause of the Sieur d'Argenton.

There is one particular Reflection, which we must not omit, concerning the Sieur de Langey; namely, that it is so true that he was the Person who sent the Challenge of the Congress, that it gave Occasion to a Sort of Contest between his Wife and him; he demanding the Congress, and she refusing it. By a Sentence, du Chatelet, and afterwards by Decree the Congress was order'd. Thus the Husband gain'd that Incident; but the Execution of the Incident not proving favourable to him, he was for that Reason, and no other, cast in his Cause definitively.

|| Tagereau, pag. 195.

AT no Time, either before or after the Condemnation of the Congress, did it ever enter into any Man's Head, that this Proof requir'd the Consent of the Husband accus'd of Impotency.

TWOULD be ridiculous to suppose it, and we can't conceive how the Partisans of the Marquis de Gesvres can make it agree with their Principles. For if the Inspection of the Wife is, as they pretend when they are in their Fury, a *Prostitution*, will the Husband's Consent purge it from that Infamy? If the Search after Virginity can produce nothing but Doubts, will those Doubts cease upon the Husband's consenting thereto? Will the Husband's Acquiescence enlighten the Eyes of the Searchers? For God's Sake, what Sympathy is there between those Eyes and that Consent? Indeed this is very extraordinary, and the Logick of the new School may be said to be no less unaccountable than its Theology.

BUT let us proceed to the principal Point for which we were oblig'd to undertake this short Dissertation; and tho' the Insight which we have just now given into the ancient Practice of the Congress, makes it impossible to think, that the Condemnation of that infamous Probation drew along with it that of the Inspection, and less still that the Inspection ever depended upon the Husband's Consent; yet by the Discussion of our four Examples, we shall prove, that that Consent was but very little, if at all regarded.

THE first of the four, is that of *Cajolas*, whose Wife was visited in pursuance of an interlocutory Order of this Officialty, dated the 5th of *March*, 1689. This Order is very simple, both in its Qualifications, and in its directing Part. The Qualifications are, *Maria Angelica le Maitre*, Plaintiff, for annulling her Marriage on Account of Impotency of the one Part; *Henry Cajolas*, Defendant, of the other. The directing Part, *The Parties being heard, we order them*

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to be view'd and inspected, &c. Thus I had Reason to maintain, as I again do, that the Inspection of the Wife was order'd, *ex Officio*, with that of the Husband, and without the Husband's Consent. Neither is there any thing in the Proceedings, (which are upon Record) that can make it be presum'd that such Consent was requir'd.

BUT, say they, it appears by the Interrogatories of the Parties, that before the Suit began, they mutually agreed to be inspected by two Surgeons. Consequently, conclude our Adversaries, the Husband had already prophan'd his Wife, and he could not after that take it ill, if the Official expos'd her to a second Prophanation. Really this is a very strange Way of Reasoning. Could the Official esteem as a thing this pretended extrajudicial Prophanation? And could a Judge have argu'd in that manner, the Husband's Consent had been a thing necessary? The Husband was pleas'd to sacrifice in Secret his Wife's Modesty, reckoning that that Sacrifice would be attended with no Bustle or Scandal, and that there would not remain any Monument of it in publick. Therefore he was pleas'd in seeing the same Sacrifice reiterated by a judicial Order, with all the noisy Circumstances that attend judicial Acts; nor was uneasy at its being handed down to Posterity by a publick Record. In good truth, if Monsieur Cheron, for so was the Official, had been capable of deducing from an absurd Consequence, he would not have been worthy of the Place he fill'd.

BUT then they insist, that it was no Wonder, in the Business of *Cajolas*, the Inspection of the Wife was practis'd, since the two Spouses accus'd each other reciprocally, the Husband imputing the Non-Consummation to the Wife, and the Wife imputing it to the Husband. When this is so, say they, both the Conformations become suspicious, and then there is no avoiding to clear up the Suspicion by a double Visitation.

ANSWER, that this has no Foundation in actual Truth: For if the Wife of *Cajolas* complain'd of her Husband's Impotency, the Husband did not charge any Viciousness of Make in his Wife's Person; and to prove this, observe his Answer to the 23d Interrogatory, says, *That he is really Potent, and has consummated the said Marriage.*

DOES this look like retorting Impotency upon the Wife? Is this saying, that the Wife has an Impediment in the Formation of her Body to hinder Consummation? It is true, in the XVth Article the Husband charges the Wife with certain nocturnal Rebuffs; and at the same time ascribes these Rebuffs to a certain Cause which he won't unfold. But this Cause could not be understood of a vicious Conformation, since such a Viciousness would have been incompatible with the Consummation which he himself confess'd; therefore it cannot be constru'd into any thing, but one of those Causes that a Husband's Anger leaves to be guess'd at.

PROCEED we now to the second Example, that of *Hubineau*.

THERE is so much Conformity between his Case and ours, that you must not wonder if we dwell some time upon it.

THE Inspection of *Hubineau* was order'd by a Sentence of this Officialty, dated the 20th of February, 1700. conceiv'd in very simple Terms: *We order the said Hubineau to be visited in his natural Parts.* This was all the Contents of it.

IN Execution of this Sentence, the Searchers made their Report the 27th of the same Month to the same Effect.

After having examin'd the said *Hubineau*, with all the Attention, in every one of his necessary Parts, in order to inform our selves, whether he was fit and capable to fulfill the Duties incumbent on the Marriage-State, we cannot give a Decision sufficiently clear and valid, un-

less we first visit and examine his Wife, from whence may get the necessary Light for drawing up a Report judicial, certain, and decisive, as it ought to be in an fair of such Importance.

PRAY, Gentlemen, observe by the by, that the Searchers propose, of their own Accord, as ours to have the Wife visited. They were no more authorized than ours, to hint at such an Order; and they made no scruple to suggest it to the Judge. And why do they make no Scruple, but because it is ridiculous to imagine, that a Practitioner consulted upon a Question of his Art, has not the same Liberty to offer an interlocutory Advice, as to offer a definitive Opinion? As if the Choice of one or t'other did not entirely depend upon his Conscience and Discretion.

AFTER this Report, *Hubineau's* Wife is interrogated upon the Articles exhibited by the Promoters. The XIth and XIIth Articles of this Interrogatory run thus: *Whether, in the present Doubt of the Hubineau's Impotency, she consents to be inspected, in order to know where the Fault lies that has hinder'd the Consummation of the said Marriage? Says, That the Physicians think it fitting she should be inspected she consents thereto. Whether she really believes she is a Virgin, and whether she knows what Sort of Impotency it is that the said Hubineau lies under? Says, She believes herself a Virgin; as likewise that the said Hubineau's Impotency proceeds from Feetleness.*

HERE we see a Wife averring, that she is a Virgin, and consenting to have her Person inspected. Upon this, another Sentence, dated the 10th of March, in these Terms: *Upon the Petitioner's Request we order her to be visited.*

THUS you see the Wife was order'd to be visited upon her own Request, and not upon her Husband's consenting thereto.

IN pursuance of this Order, the four Searchers who had visited the Husband, and two Matrons respectively nominated by each of the Parties, proceed to the Inspection; and thus the Searchers are in number six. Four of those six find for the Virginity of the Wife, and give their Opinion, that *the Marriage was not consummated*. Two others club together a-part, and draw up a separate Report in these Terms:

We cannot infer, that the said Hubineau ought to be declar'd utterly impotent, since in the Inspection which we have made of his Person, we found the Parts, destin'd for Generation, to be so well conform'd, as to give us Reason to believe, that if there is any Difficulty in fulfilling the Functions of Matrimony, it may be imputed not to a Corruption or Abolition of the Action of Marriage, but only to a Diminution thereof; and that this Diminution may be cur'd by an Increase of conjugal Love on both Sides.

THO' by the Terms of the Report, *Hubineau's* Conformation was regular; and tho' the Promoter requir'd the Searchers to explain themselves, yet Monsieur Chaplier, then Official, assisted by M. Pierot, M. Boucher, Curate of St. Nicholas du Chardonnet, and M. Vivant, Deputy; M. Chaplier, I say, on the 1st of April pass'd his definitive Sentence, declaring the Marriage null and invalid.

FROM this Sentence, the Husband appeals to the Parliament as aggriev'd, and at the same time gives in a Petition, and desires that *they would take it into Consideration, that the Report of the Matrons and Surgeons* (transcrib'd as before, the last of the two) *was sufficient to prove the said Hubineau an Impotent. He farther alledges, he is not an Impotent; and prays, that they would order him to be view'd and visited by such Surgeons, as the Court shall appoint for that Purpose, &c.*

PRAY, Gentlemen, observe the Spirit of this Petition; you will thereby see, that *Hubineau* turns into Reasons of Grievance the very Reasons which were made use of for the *Marquis de Gesvres*. He alledges the Report of the Matrons and Searchers who visited his Wife, because therein he finds two of those same Searchers bearing Witness to his good Conformation. He pretends at first, that that Testimony is not sufficient; but in Case it is not sufficient, he prays a new Visitation, not of his Wife's Person, but his own. And why a new Inspection upon himself? Because he supposes, that it is a Grievance and an Error to judge of the Husband's Impotency, by visiting the Wife. *You must not (says he) seek for the Proofs of my Condition in her, but in me. 'Tis my Person, and not her's, must clear up the Doubt, as to my Potency or Impotency. The very Searchers who inspected my Wife, after they had visited me, found nothing in me to make them doubt of my Potency; but if they did not fully explain themselves in Relation to my Person, I consent to go through a new Visitation; and not only consent to it, but beseech it.*

WHAT Event had this Appeal? The same with all others of the like Kind. The Parliament declar'd him not aggriev'd by that Sentence which had dissolv'd his Marriage, upon the Visitation of his Wife; and as for the Husband's Petition tending to a new Visitation of his Person, he might prefer one, and sue it out, if he wou'd, thereby shewing that such Petitions were admitted only in the Ecclesiastical Court.

AND now the Consequence deducible from this Decree, is equally simple and decisive for us; for, in short, it adjudges that an Official may, without aggrieving any Body, dissolve a Marriage upon a Proof resulting from the Visitation of the Wife, even tho' the Husband be exactly conform'd, and tho' the Visitation was requir'd and besought by the Wife alone, independently of the Husband's Consent.

WE must now proceed to the third Example, namely, that of *le Mercier*, in all things like to that before-mention'd.

Le Mercier's Wife began with a Petition, to be allow'd to prove her Virginity, supposing that Virginity being once prov'd, would imply the Proof of Impotency in the Husband; for to that Effect were the Conclusions of her Petition, and such the whole Spirit of it.

THE Husband being summon'd before the Official of *Rennes*, throws in an Appeal against the Summons: But afterwards he withdraws his Appeal; and upon the withdrawing thereof, a Sentence passes, dated the 7th of *October*, 1702. which gives him leave so to do, and which consequently orders that the Parties shall proceed. Accordingly they do proceed; the Husband is inspected, and the Report of his Inspection concludes thus: *We say that it is difficult to judge whether he is Potent, and that it is necessary we should inspect his Wife.*

HERE we have another Example that the Searchers may, without a Crime, and without encroaching upon the Judge's Office, propose, of their own proper Motion, to have the Wife visited. The Report is follow'd with an Order to hear Counsel upon the Question, whether the Wife shall be visited. In short, after the Difficulty had been amply discuss'd, the Wife insisted to have her Person visited, and the Husband hindering it, an Order is made for the Wife to be inspected, and that the Searchers shall make their Report whether or no she has been deflower'd.

UPON this the Husband appeals to the Parliament of *Rennes*, who declare against admitting the Appeal; and why not admit it, say the Marquis de *Gestres's* Advocates? Because, add they, the Husband had consented to have his Wife visited; and after such Consent, he could no longer complain of the Sentence which order'd her to be visited. This in-

deed is a very fine and ingenious Conceit, but has nothing for its Foundation but the Dreams of our Antagonists; for there is not any where the least Trace or Foot-step of such imaginary Consents. They have quoted upon us an Act of the 7th of October, 1702; but would you know, Gentlemen, what that Act was? 'Tis an Order which gives leave to the Husband to withdraw his Appeal; and this is what they would put upon us for a consenting to the Wife's Inspection.

Now, if after this I should be ask'd, why the Parliament declar'd that his Appeal ought not to be admitted; I answer, that so far forth as I can judge of it, it was because the Husband had borrow'd his Ground of Appeal from that old Appeal of his, which he had desisted from. *I have*, said he, *by an Appeal attack'd the Competency and Jurisdiction of an Ecclesiastical Judge*: 'Tis true, I afterwards departed from that Appeal, but such Departure could not establish the Competency and Jurisdiction of an Official; therefore, before any Proceedings had pass'd in the Officialty, the Point of his Competency ought to have been settled; and this not having been done, 'tis consequently a Grievance.

UPON this the Parliament decides, that when once a Person has withdrawn his Appeal, he has not a Right to complain (for his own particular Interest) of the Judge's allowing him to withdraw it. Now if any publick Person, if the Attorney-General had complain'd, he might have prevail'd; but the Defender of the publick Interest being silent, a private Interest that had withdrawn its Appeal, was no longer of any Weight. And this undoubtedly was the Motive of the Parliament's declaring against its Admission, I say undoubtedly, and have Reason to say so; for otherwise 'tis impossible to reconcile their Declaration with the Proceedings which are taken notice of in the Official of Renne's Sentence. For to pretend, as our Adversary does, that the Husband con-

sented

sented to the Visitation of the Wife, and that 'twas that Consent which occasion'd the Parliament to reject him, is not only feigning what never was, it is feigning what could not be.

THE Reason is this; there had been no other Question agitated between the Husband and the Wife, but whether the Wife should be visited. And by this Means, the Husband's consenting to the Visitation would have decided the Suit; which would have oblig'd the Judge to have mention'd it in his Sentence, and to have said that he had order'd the Visitation by Consent of the Parties.

In short, after the Parliament's Decree, the Wife was visited, and the Report of her Visitation concluded with these Words, *That the Husband had not been able to accomplish the Defloration.*

It were to be wished we might here transcribe that same Report, because it gives an exact Description of the Tokens of Virginity. But Decency forbidding us to expose such Circumstances to the Eyes of the Publick; I shall content my self with pointing to it, and conclude the Discussion of this Example with this additional Observation, that upon the Proof of Virginity, the Wife was freed from her Husband, and so effectually freed, that she lives now with another Husband.

THE fourth and last Example is that of the *Sieur Verdin*, whose Marriage was dissolv'd in 1711. by a Sentence of a Counsellor of the Parliament of *Dijon*, foreign Official of *Langres*. This Example requires no long Dissertation, because it is true, that the *Sieur Verdin* thinking, as all other Impotents do, to save his Credit by a sham Confidence, declar'd that he did not oppose either the Inspection of his own Person, or that of his Wife; but can it be from thence infer'd, that tho' he had not consented to it, the Judge would have made any Bones of ordering his Wife to be inspected? Is not such a Way of Reasoning

soning a manifest Sophism, *Post hoc, ergo propter hoc.*

How! Because the Husband made a Virtue of Necessity, and consented to a Proof which he could not hinder, does it follow that he might have hinder'd it if he had oppos'd it? Surely, if this be so, a Man that is a Debtor in a just Debt, and who makes Tenders of Payment, could not, if he had not made such Tenders, have been forc'd by Law to pay his Creditors: Such is exactly the fallacious Syllogism of our Antagonist: But to return to the Principle. The Necessity of the Husband's Consent, is a Chimera equally contrary to Law and Reason; a Chimera grafted upon another, namely, that the Inspection of the Wife is set aside as well as the Congress. And from these two Chimeras accumulated, a third is produced more whimsical than the other two. For they conclude, that the Proof by Inspection being become unlawful, nothing but the Consent of the Party concern'd, can warrant the Usage of it. A Reason which would likewise prove, that the Congress might still be used, if the Husband would consent to it.

By this 'tis plain, that there's no Kind of Paradox that the Marquis will stick at. And what may we not expect from his Partisans, after a certain Writing, which is spread abroad without the Author's Name; a Writing which seems only design'd to inform the Publick, that Monsieur de Gesvres's Cause is already in the Hands of Quacks, and that the Physicians give it over? We shan't take notice of the Quack's bringing in one *Biel*, one *Koninck*, &c. to speak in the Cause. But that he should corrupt the most notorious Texts, such as the Chap. *Debitum de Big.* that he should misrepresent the Propositions of his Adversaries, as he does every Moment; that he should resume the old confused Illusions, without troubling himself to answer what has been said to re-

At them: This is what belongs to none but an Inter-
 looper in Law, who is bold enough to speak what he
 does not understand, and at the same time wise
 enough to conceal himself under the Masque of an
 anonymous Author.

THIS *Ignotus* has caus'd to be printed at the End
 his Book, an Extract of seven Reports of Searchers,
 relating to seven particular Persons, *du But, le Page,*
d'Amour, Royer, Totin, Grenet, and le Bret. He brings
 them all in for Examples, that, in the Science of
 Searchers, Conformation decides the Point of Impo-
 tency: *Du But*, says he, and the others, save them-
 selves by means of their regular Structure; why may
 not the Marquis *de Gesvres* have the same Privilege?

THIS were well enough, if it were true; but af-
 ter that Madam *de Gesvres's* Advocate has confuted
 all those Examples minutely in his first Replication;
 after he has, by a particular Discussion of each of
 them, discover'd how the Marquis's Advocate abuses
 them; in short, after this empty Phantom had been,
de novo, confounded, and put to flight in the general
 Answer, there was no need to revive such shallow
 Reasonings; or at least, he ought first to have an-
 swer'd those which had been advanc'd against
 them.

WE shan't take any notice, how the Marquis's
 Advocates slur over the Arguments of their Adver-
 sary; but yet in common Honesty, at least, they
 should forbear to invent any thing; and yet the ano-
 nymous Author does not forbear it. He has the As-
 surance to aver, that among the six or seven Exam-
 ples by him cited, there are four wherein Virgin
 Wives were concern'd; Wives who offer'd to make
 Proof of their Virginitie, but were not regarded,
 because good Conformation prevail'd above all other
 Proofs.

AND yet nothing of all this is true: We have
 told them so twice, and are forc'd to repeat it a third
 time.

NOT

NOT any one of those Wives, unless perhaps *le Bret's*, offer'd to make Proof of their Virginity; nor any of them pretended to be a Virgin, nor any of them demanded to be inspected. One of them was a Widow, at the Time of her Marriage with the pretended Impotent; another of them married again of her own Authority, during the Absence of her Husband, whom she accused of Impotency. Two others confess'd, that the Tokens of Virginity no longer remained within them; and as for the two last, it was manifest from the Confession of both Parties, that there never had been Consummation. So that the Search after Virginity would have inform'd them of nothing more than what they knew already. All this is proved from the Interrogatories of the Parties, Copies of which have been taken out of the Office, and communicated to the Marquis de Gesvres's Attorney. Thus in none of these Cases was it possible to judge of the Husband's Impotency by the Wife's Virginity.

As for *le Bret's* Affair, nothing is less a-kin to our Cause, than the Dispute between him and his Wife.

THE Wife taxed the Husband with an Impotency of Weakness; the Husband taxed his Wife with the Impotency of a vicious Organization: This Impotency was reciprocally charged, and consequently it was plain the Marriage never had been consummated. But then the Question was, Which of them was the Occasion of its not being consummated. The Husband being visited, the Searchers declare they cannot adjudge him Impotent before they examine the Wife. The Wife being visited, they conclude, that the Husband is Impotent, but not absolutely so, but only relatively, with respect to his Wife alone.

THESE are the very Words of their Report, (tho' the anonymous Author has left them out in his Extract,) *This does not suffer us to doubt of the said le Bret's Impotency, with regard to the said Mary Louisa Buchers.*

As by this last Report, the Husband was only arraigned of a relative Impotency; he from thence concluded, that the Judgment which had been given of his Condition was wrong in its Principle, by reason the Searchers could not possibly know that there was a relative Impotency in him. *To judge, says he, of a relative Impotency, the same Persons must have examin'd both the Spouses. Now of the six Searchers who have declar'd me relatively Impotent upon visiting my Wife, three saw none but my Wife, and did not see me at all; consequently incompetent Judges of a Relative Impotency.*

UPON this, a new Report is order'd; new Searchers nominated to inspect the Husband a second Time. Now, in the Event of this second Visitation, the Searchers say, that there was nothing in the Husband's Person *that could hinder Generation.* A very extraordinary Expression, but which shews, that he had given the Searchers other Tokens of Virility than bare Conformation; for else they would not have gone so far as to have own'd, that he had in him the generative Faculty, which is not necessary, even to the Validity of a Marriage.

IN these Circumstances, the Official seeing a married Couple thus reciprocally accusing each other of Impotency, without the least Appearance of any Impotency in either of them, and judging besides from the Interrogatories, that they were enrag'd against each other (for the Interrogatories give such an Account thereof as would make one shake) the Official, I say, in these Circumstances rejects their Demands for a Dissolution of Marriage; and to shew that he ascrib'd their reciprocal Accusations to the Fury which possess'd them, he injoyn'd them to look upon each other as Man and Wife, and to live together accordingly.

WHAT Consequence, after this, can be drawn from this Example, in favour of the Marquis de Ges-
ves?
DOES

DOES our present Cause turn upon any such Thing as two respective Accusations of Impotency, undertaken, on both Sides, upon Motives of Hatred? Has the Marquis de Gesvres own'd, as *le Bret* did, that his Marriage was never consummated? Has he, like him, three Reports of Searchers, the first declaring, that *they cannot adjudge him impotent*; the second, that *if he is impotent, his Impotence is only relative*; the third, that *there's nothing in him to hinder Generation*?

Le Bret had all these Testimonies in his Favour; whereas the Marquis de Gesvres has nothing on his side but Doubts, which lean much more towards the Negative than the Affirmative of Potency. Let him not therefore pride himself in drawing a Parallel between his Cause and that of *le Bret*. But it is high Time to proceed to the second Part, that of *Triennial Cohabitation*.

Confutation of the third Proposition,

That in this Affair, triennial Cohabitation is not a Thing to be overlook'd and despis'd.

UPON the * Credit of the Decrees cited by *Chopin*; it was for a long Time believ'd in the Courts of Judicature, that the Usage of triennial Cohabitation was banish'd as abusive, [*i. e.* a Thing not within the Jurisdiction of the Ecclesiastical Judge] and all the Chirographers were of the same Opinion.

* *These Decrees are cited in the Memorial upon triennial Cohabitation.*

BUT the Question being reviv'd in 1634, the learned M. Bignon undeceiv'd the Publick, and shew'd, that a Sentence of an Ecclesiastical Court which subjects the marry'd Couple to a Probation of three Years, does only afford Grounds for a simple Appeal, not for an Appeal of Abuse. [*An Appeal of Abuse is in France an Appeal to the Parliament from the Sentence of an Ecclesiastical Judge who had gone beyond his Power.*] Therefore I must agree, that the *Triennium* may be order'd without Abuse; nor will I pretend, Gentlemen, to maintain the contrary.

WHAT I maintain, is, that the Constitutions *Laudabilem* and *Litteræ*, one whereof did introduce into the Church, and the other has authoriz'd, the triennial Cohabitation; that these Constitutions, I say, are made for particular Cases, and that it is abusing them, to make general Rules of them; for this is the Rock which most of those who judge of the Meaning of Laws by bare Theory, split upon. What was establish'd for a special Case, and for Reasons peculiar to that Case, they make to be a general Principle, and introduce it upon all Occasions, without considering, that there are very few Rules absolutely general; and that as to the others, it is with them as with a Suit of Cloaths, which is good for nothing unless it fits the Stature and Bulk of the Person who is to wear it.

BUT then, they'll say, who shall teach us to distinguish the Cases where the *Triennium* may be us'd, and where not?

I ANSWER, That to teach us this, there's but one Master, namely Usage, or rather Experience; but for our Unhappiness, that Master is wanting to us. For the *Triennium* has been so little us'd, so little practis'd, that in the Registers of the last 50 Years of this Officialty, we scarce find one Precedent of a Husband demanding the triennial Cohabitation, and the Judge ordering it.

I HAVE

I HAVE already discuss'd the said Example in the Memorial which I compos'd upon that Subject, and I shall speak one more Word to it in the future Part of this Replication. This we may now say, that it is at least certain, that during the Course of half a Century the Example is single; and tho' the † Praisers of the triennial Cohabitation complain of its being exterminated by the Congress, the Example I speak of is prior to the Abolition of the Congress, for it was in *Anno 1675*.

SINCE therefore we can learn nothing from Usage, let us at least be taught by Non-usage, which will inform us, that it is a very rare and very difficult Thing, to meet with Cases where triennial Cohabitation may be usefully practis'd. And indeed if in 50 Years there happen'd but one Case, we ought, one would think, from thence to conclude, that it would be next Kin to a Miracle if that Case were now return'd upon us.

BUT because they of the other Side may be so scrupulous as to say, there are Canons, there are Ecclesiastical Laws, which cannot be abrogated by Non-usage, we will push the Examen of the Question home to this last Intrenchment, and examine whether this religious Timidity is as prudent as pious.

WE can't judge of the Intention of a Law, otherwise than by the Text of that Law itself, or by the Interpretation which is given it by the Usage in the Places where it is practis'd; nay, it would be dangerous to consult only the Law without the Usage. For, as *Bartolus* says, the Law without Experience is a crude indigested Sort of Food, which does more Hurt than Good. It is Experience, it is Usage alone, that operates the Digestion, and converts it into good and solid Nourishment. This is the Meaning of that Ex-

† Tagareau and Hotman.

pression so frequent in the Writings of *du Moulin*,
Leges in Scholâ deglutiuntur, in Foro digeruntur: Laws
are swallow'd in the Closet, but digested in Court.

ACCORDING to this Principle, let's first see
how the Law speaks, and afterwards how the Usage
of the *Rota* has interpreted it.

WE have two Texts, one whereof establishes, and
the other seems to confirm, the triennial Cohabitation;
and those two Texts are those above-mention'd, the
Chapter *Laudabilem*, and the Chapter *Littera*.

THE last of those Laws is no Repetition of the
former, 'tis a new Law made for a different Case: So
it is of the greatest Importance not to confound the
two Cases.

THE Chapter *Laudabilem* is made for a Man who
is suspected, but not convicted of Frigidity; for a
Man who confesses he has not consummated his Mar-
riage, but who flatters himself that he shall consum-
mate in Time. And thus much may clearly be in-
ferr'd from the very Words of the Law, *Requisisti
quantum tempus indulgendum sit naturaliter Frigidis ad
experientiam copula nuptialis*; You demand what Time
is to be allow'd Persons naturally frigid, to try whe-
ther they can consummate. Will you by those Words,
naturaliter Frigidis, understand declar'd Impotents,
Impotents convicted of Frigidity? If so, why were
they not instantly loos'd from the Marriage-Bonds?
For the Sequel of the Decretal tells us, that when
Frigidity is once apparent, there's no more to be done
but to declare the Marriage void. Again, will ye
have those Words be understood of such Husbands
as were accus'd and half-convicted of Frigidity by
judicial Proofs? But in the Time of the Decretals,
there were no judicial Proofs of Frigidity; for then
they did not use to visit the Person of the Husband.
There was indeed at that Time a judicial Proof of
Impotency, namely, the Inspection of the Wife. But
then it must be suppos'd, that in the Case of that
Decre-

Decretal, they had begun with that Inspection, and so the Inspection of the Wife ought to precede the *Triennium*, as indeed is practis'd in the *Rota*, as shall hereafter be shewn.

BE that as 'twill : If in the Case of the Decretal, neither Husband nor Wife had been inspected, when the Pope oblig'd them to triennial Cohabitation, the sovereign Pontiff could not be inform'd of the Husband's Frigidity otherwise than by his own Confession ; and so the Expression *naturaliter frigidi* must be understood to mean those People who are dubious, who hesitate about their natural Condition, and who declare with their own Mouths their Scruples to the Church, and consequently confess they never consummated their Marriage.

THIS is not enough ; it is not sufficient that those People hesitate ; their Hesitation must be accompany'd with some Confidence ; they must presume upon some future Capacity, and declare as much to the Church. This appears from the Term *indulgendum sit*, which supposes a Favour begg'd of the Church, upon the Foundation of an interior Doubt which the Church can't guess at. And what compleatly verifies this, is the following Expression, *ad experientiam copula nuptialis*, to try whether they can consummate ; for thereby 'tis plain the Decretal is made for a Case where the Husband prays Time to approve himself, *ad experientiam*. And indeed, if he does not pray Time, can the Church presume, that he who so far despairs of himself as to think that no Sort of Probation wou'd be of any Use to him ; can she, I say, presume that such a Man has any need to be try'd ? This then is not so much a Proof introduc'd to inform the Judge, as a Trial demanded by the Husband, and granted to him upon an humble Confession of his past Impotency, and upon his hoping that it may be otherwise with him in Time to come.

LET us add to this, that the Chapter *Laudabilem* supposes in both the Spouses the same Wishes, the same Desires; in a Word, a perfect Harmony of Wills; and this appears from those Words *si nec tunc volunt cohabitare*, if they refuse to cohabit; this designates a common mutual Will; as do likewise those Words *si ambo consentient*, & *si ambo fatentur*; if both consent, and both confess. To conclude, the whole Run of the Text, from the first to the last, shews plainly, that it was design'd for none but Persons equally sincere, equally resign'd to the Commands of the Church.

WHICH likewise may be inferr'd from the Practick of that Text, as we are taught by the Glosses and Doctors. For the Church does not engage the marry'd Couple to the triennial Cohabitation, 'till after she has enjoin'd them to do, *bonâ fide*, all that in them lies, in order to arrive at uniting each others Flesh; nay, she requires them after the three Years are over, to make solemn Oath, that they have us'd their utmost Endeavours so to do: Thus she supposes in them a certain Uprightness of Intention, without which the Remedy which she proposes, can't produce any Thing but a very great Mischief, without almost the least Hope of any Good resulting therefrom.

HERE we see, there are a World of Conditions necessary towards making Room for the triennial Cohabitation, in the Case of an Accusation of Frigidity.

THE Husband must own himself to be feeble, he must confess he has not consummated, he must promise himself some Relief from Time, and must declare so to the Church: (for if there's no Hopes of his Frigidity's going off, he would be in the Case of a prov'd Frigidity, and consequently in the Case of the Exception, *si frigiditas prius probari non possit*, if Frigidity cannot be proved otherwise.) To conclude,

clude, the Church must presume upon the Sincerity and Harmony of the Parties; at least, there must be no Grounds for fearing Violence on the Part of the Husband: Without all this, he is out of the Letter, and out of the Spirit of the Decretal *Laudabilem*, and remains to examine the Chapter *Littera*.

The common Doctrine of the Canonists embrac'd by the *Rota*, is, that this Chapter was made only for such Impotencies as were suspected of Sorcery, among which are rank'd those which I have characteriz'd in *Latin* in my last Plea; as likewise those which have an Abhorrence for none but a lawful Bed-fellow, if any such there be. I shall not give the Reasons and Grounds of this Interpretation. I shall content my self with setting down (at the Bottom of the Page) an Account from what Store-Houses I drew them. * In some of which will be found the fundamental Principle of the Doctrine I just now laid down.

THE

* *Innocentius in cap. ult. de Frig.* Hic convincitur, quod hæc Decretalis loquitur de Maleficiatis, & dicitur Maleficium perpetuum, quod intra triennium per exorcismos & orationes non cessat. *Rota, Decis. 54.* Non præsumitur Maleficium perpetuum, nisi per triennalem Cohabitationem. *Rota* semper servavit & servat dictam Cohabitationem triennalem, quando agitur de Maleficio. Inducta est hæc dispositio, ut peragatur pœnitentia, & mediantibus orationibus, frequentatione Sacramentorum, jejuniis & lachrymis, & peregrinationibus, Dei misericordia impetretur: & in istis terminis Maleficii intelligitur Textus in d. cap. *Litteræ*: Ancharanus on the first Chapter of *Frigids*. Decretalis *Laudabilem* loquitur de Frigidis, Decretalis autem *Littera* de Maleficiatis; idem Ancharanus in d. cap. ult.

These

THE greatest Use, after this, of the *Triennium*, is to serve as a Touch-stone for discovering whether the Impotency proceeds from Frigidity or Sorcery, whether 'tis natural or accidental, perpetual or transient. For this Doubt often presents it self before the *Rota*, which suspects of Sorcery all those who like the *Baron du Pont* are furnish'd with the motive Faculty, tho' it serves them in no Stead. Now as for such, they are try'd by a Cohabitation of three Years; and if their Impotency does not go off in that Time, it is judg'd to be perpetual and incurable. This is the Reason why in that Case the full *Triennium* is indispensably necessary. It being a Proof of the Perpetuity of Impotency, the Judge may not indulge them as to more or less Time. *Tunc enim, says the Rota, tempus est de solemnitate probatoria.*

These Authorities might be corroborated by an infinite Number of others, if Time would give leave; but since it does not, we shall only say, that two Reasons oblig'd the Doctors, and after them the Rota, to understand the Chapter Litteræ of an Impotence caus'd by Sorcery. The first was, the Husband who own'd himself impotent towards his Wife, alledg'd he was not impotent to any other Woman; which is the true Character of Sorcery. The second is, the Judge impos'd Works of Penance on the Parties; which is never done but in Case of Sorcery, according to the Canon si per Sortiarias. For as the Church supposes Sorcery to be a Punishment for some Sin, so she supposes that Penance, in doing away the Sin, will put an End to the Sorcery. 'Tis otherwise with Frigidity, which is a perpetual and irreparable Vice of Nature, really permitted by divine Providence, but doom'd by it to be permanent.

Soto observes in 4 Sent. art. 34. *Ex quia illa Maleficia sæpissimè de criminum meritis oriuntur, admonet Ecclesia, ut corde contrito se in Deum convertant, precibusque tam ipsi pro se, quàm alii pro ipsis, apud eum insistant, quod Frigidis non injungitur.*

BUT

BUT when the Husband has given no Tokens of Motion, or but feeble ones, as in the Case of the 14th Decision, it is not necessary that the Probation should continue three whole Years; because then there's no Suspicion of Sorcery, and it is a plain Frigidity. Now in Case of Frigidity, the *Triennium* is not rigidly observ'd. They only examine, whether the Husband has had a competent Time for acquiring, or else for fortifying the motive Faculty; and this Time depends upon the Judge's Discretion.

FOR this Reason, *Tagareau*, as great a Friend as he is of the *Triennium*, owns, [p. 116, 117.] that it does not take Place when the Husband has made no Shew of Motion. He likewise quotes in p. 109. a Passage of *Propositus*, who says the same in express Terms.

WHAT's the Meaning of that Rule, which at first Glance seems to clash with Chapter *Laudabilem*? I'll give you the Reason of it, and shew you how to reconcile it with the Text of that Chapter.

IT is a Principle in Law, that there's this Difference between Questions of Law and Questions of Fact; the Judge is not Master of his Decision in the former, as he is in the latter: *Facti quidem questio in potestate judicantis est, Juris autem non ita.*

WHY is not the Judge Master in Questions of Law? Because, such Questions depend upon general Principles which the Judge cannot change.

WHY is he more Master in Questions of Fact? Because, a Question of Fact depends upon the inward Conviction, or, to speak better, the Impression which the Proof makes on his Mind. Now, this Impression and this Conviction depend upon his Prudence.

WHEN therefore the Business is to know, whether a particular Man is touch'd with Frigidity, as the Question is wholly a Point of Fact, the Conviction of the Judge is arbitrary; it depends upon his Insight,
his

his Conscience, his Penetration; whence it comes to pass, that when he is convinc'd of the Frigidity before the three Years are expir'd, he ought then to reckon it prov'd; and in that Case, the Lapse of three Years is no longer necessary, because that is the Case of the Exception taken notice of in Chapter *Laudabilem, si frigiditas prius probari non possit.*

To this Explication must be added a material Observation, contrary to what I advanc'd in my Memorial upon triennial Cohabitation. Being deceiv'd by the Authority of *Hotman* and *Tagareau*, I thought they did not proceed to inspect the Wife 'till after the three Years; but having since made a narrower Search into the Decisions of the *Rota*, I find that the Inspection of the Wife us'd to go before the *Triennium*; and that after the three Years were expir'd, they judg'd of Consummation or Non-consummation no otherwise than by the Oath of the Parties, or that of their Kinsfolks, that is to say, by the *septima manus*. *

THIS Order is already the only canonical one, since it is that which is observ'd in Chapter *Littera*: But it besides carries with it a twofold Advantage. For if the Husband confesses that he has not consummated, they discover, by the Visitation of the Wife, whether such Confession be sincere, or a Trick contriv'd between the Parties. So is it for this Purpose of discovering Collusion, that the Visitation is introduc'd in Chapter *Littera*: *Vos verò, ne id confiterentur in fraudem, dictam fecistis inspicere mulierem.*

* This is deducible from the Decisions, 6, 7, 14, and 16 of the *Rota*, *Sanches* l. 7. *Disput.* l. 108. n. 6. and *Disput.* 109. n. 16 and 17.

IF the Husband affirms upon Oath, that he had consummated, they see by visiting the Wife whether he's forsworn; and in that Case, the *septima manus*, or Jury of the Wife, which is practis'd at the End of the *Triennium*, prevails above the *septima manus* of the Husband, because the Husband is convicted of false Swearing.

THIS shews, that the Practice of the *Triennium* contains more Mysteries than are to be learn'd by Books of mere Speculation and Reasoning.

THE *Triennium* is indeed a canonical Proof, a Proof approv'd of by the Church, but dangerous in its Execution; a Proof which requires the greatest Circumspection, and which ought not to be resorted to but when there's no other to be found. * Let us now come to the Consequences which are deducible from the Principles which we have been laying down, and then let's apply the same to our Cause.

WE are not yet in the Case of an Impotency suspected of Sorcery. The Impotency of which we accuse the Marquis de *Gesvres*, is a Privation of all Motion, and consequently a true and perfect Frigidity. This is the Charge in our Accusation, and this Charge is confirm'd by the Declaration of the Searchers who have visited the Marquis de *Gesvres*.

WE are therefore in the Circumstances, where, according to the Principles of the *Rota*, there is no absolute Necessity for a Probation of three entire Years; and as we have already liv'd together two Years and nine Months, we may say, that that is more than enough to convince any reasonable Person, that if there ever was a desperate Impotency, 'tis that which we complain of.

* Triennalis non potest fieri absque evidentissimo periculo peccati. *Rot. Decis.* 40.

THE Marquis de Gesvres did not only appear to the Searchers to be without Motion, but neither has the least Spark been kindled in him since the Time of their Report.

THE invincible Obstinacy with which he persists in hiding himself, shews, that his Condition is fix'd and unalterable. For this Reason he now wraps himself up in his Virtue, as he did before in his Shirt. Let us join this Involution in the Shirt, to the Dread of being a second Time inspected; these two probatory Fragments will so well quadrate together, that they will shew ye a Husband, Gentlemen, who needs no farther Probation.

BE that how it will; if he had found in himself any Occasion for Probation, he should have pray'd it, he should have ask'd Time, *ad experientiam copulae nuptialis*. He was the best able to judge of himself. He should have set forth his Exigencies to the Church. The Church, who judges not occult Things, can't divine a Necessity which he kept to himself. He might have demanded the three Months which are wanting to fill up the three Years.

THE only Husband, who for the last Fifty Years obtain'd a triennial Cohabitation, did for that Purpose, draw up a formal Petition. The Sentence makes it appear; for thus it runs: *And in Consideration of the said du But's Petition, we order his Wife to return to him, and to live with him for the Remainder of the three Years, to be reckon'd from the Day of the Celebration of the Marriage, according to the Holy Decree.*

THESE Words in Consideration of, shew, that if the Husband had not petition'd for Cohabitation, the Official would not have order'd it. Now, the Marquis de Gesvres is so far from asking it, that, at all the Hearings, his Council declares for him, and in his Presence, that he does not ask it; nay, there's a Minute

note enter'd down by the Clerk of the Court, that he does not ask it.

THO' he did ask it, 'twere not just to grant it him; because he has given no such Hopes of Virility as were given by that Husband to whom it was granted in 1675.

Do but look into the Interrogatory of *du But's* Wife, and you'll find, that just as much Reason as there was for *his* Cohabitation, so much is there against that of the Marquis. We have explain'd * the Reasons of the Difference in the Memorial upon Cohabitation.

NOR can the Marquis *de Gesvres* now pray for the *Triennium*, without exposing himself to be call'd by a very scandalous Name. He must begin his Petition thus: *I cheated the Church, when I affirm'd I had consummated my Marriage. 'Tis no such Thing; I have not consummated it; but I pray Time to consummate it.* And thus would the Marquis be convicted of Perjury out of his own Mouth.

NOW, if once he's convicted of Perjury, where would be that Ground of Candor and Sincerity which the Church supposes in all those to whom she allows the triennial Cohabitation?

* The Reasons are, 1st, *du But* was so far from being without the motive Faculty, that by his Wife's Confession he could Half-penetrate her. 2^{dly}, The Searchers Report was in *du But's* Favour. 3^{dly}, By the Interrogatories, *du But's* Impotency seem'd to proceed rather from a domestick Dissension, than from an Error of Nature; rather from a Vice of the Spirit, than a Vice of the Flesh. 4^{thly}, In *du But's* Case, the Wife own'd, that the Evidences of her Virginity were lost; and that partly by fair Means, partly by foul, the Husband had done them away.

IN short, take the Thing which Way ye will, the Inspection of *Madam de Gesvres* would be still the first Thing to be done. The *Rota* is us'd to begin with inspecting the Wife; and this Usage is grounded on Reasons which here meet with a very just Application.

IF the Event of the Inspection is not favourable to *Madam de Gesvres*, there's an End of the Suit, and the *Marquis de Gesvres* is confessedly a Husband.

TWOULD be to no Purpose for *Madam de Gesvres* to talk as *Madam de Langey* did, and impute the Loss of her Virginity to Violence. She would not be minded, after having made it Part of her Charge that she's a Virgin; and after having asserted, as she again asserts, that the characteristick Tokens of Virginity are remaining in her, just as she receiv'd them from Nature. Thanks to a certain Continency of Hand which the *Marquis de Gesvres* impos'd on himself, that he might not set the Marchioness his Wife an ill Example.

BE that as 'twill; the Inspection which I pray, is in this Case equally decisive for the Husband as for the Wife; and when the Partizans of the *Marquis de Gesvres* go about to infuse a Belief that *Madam de Gesvres* is prepar'd to elude the Judgment of the Searchers in Case it goes against her; they are forc'd (in order to colour their *Chimæra*) to cut and main my Expressions in the first Replication. (For this is their Way, when they have a Mind to make a Nose of Wax, either of the Dead or the Living, and would have 'em say what they themselves please.) They mutilate, they retrench, they transpose, they make that an Answer which was an Objection; in short, they dispose of their Adversary's Work, just as if 'twere their own proper Goods and Chattels.

Now, if on the contrary, the Event of the Inspection proves in Favour of *Madam de Gesvres*, if

Madam *de Gefures* comes off with an authentick Testimony of her Virginity ; then it will at least be certain, that the Marquis *de Gefures* impos'd on the Church, when he so peremptorily affirm'd , that he had consummated his Marriage an infinite Number of Times : And then would any Body doubt of the perpetual and habitual Privation of the motive Faculty ? Would not his Frigidity be prov'd ? And if any Body should be so hard of Belief as to doubt it, they at least could not doubt of his swearing false.

And what Effects would his false Swearing produce ? It would, Gentlemen, produce two very considerable ones. First, you could not deliver up Madam *de Gefures* to a Husband whom you had all the Reason in the World to distrust ; you could not, I say, deliver her up to such a Husband, without taking the greatest Precautions against his indirect Attempts. The second still more essential than the first : The Marquis *de Gefures* could no more be believ'd upon his Affirmation, if after the Time of the Cohabitation was elaps'd, he swore he had consummated. You must of Necessity be determin'd by the Oath of Madam *de Gefures*, and that of her Kinsfolks.

BUT I'm in Hopes, Gentlemen, that your Conscience and Prudence will incline ye to believe , that the triennial Cohabitation was not meant for such a Case as ours.

It is a terrible and ineffectual Expedient ; an Expedient which requires a certain Disposition of Hearts and Minds, which is not to be met with between a Wife that accuses, and a Husband that is accus'd, of Impotency ; in short, an Expedient that has, by the Experience of many Ages, been found impracticable ; and to close all in one Word, an Expedient almost always fatal, and almost never beneficial.

I F, Gentlemen, you were forc'd by the Law to take this Course, I should have nothing to say ; but you

you are not constrain'd thereto by any Thing whatever; nay, all Things conspire to turn ye from it.

I HAVE shewn that the Chapter *Laudabilem* was a Law, subject to the Prudence of the Judge; and will your Prudence, in this Case, suffer ye to sacrifice for the Sake of a pitiful Residue of a *Triennium*, will it, I say, suffer ye to sacrifice to a superstitious Formality, both the Modesty and Cause of a Virgin-Wife?

THEY may tell us, as long as they please, that the Cohabitation is only allow'd of in order to bring an Eclipse upon Virginity. This is true, when there's any Room to hope that it will be eclips'd by natural and lawful Ways.

BUT what can ye expect from the Marquis *de Gesvres*, after what the Searchers have declar'd of him, after what all the World knows of him, after what he himself makes known, more by his Silence than Discourse? For, in short, his Silence says yet more than his Discourse.

BEFORE I conclude, Gentlemen, permit me to speak one Word to a Book which is just now spawn'd by one of the Marquis's Advocates.

THIS Book is nothing but a Repetition of old Errors. 'Twould be no difficult Thing to shew therein an infinite Number both of false Tenets, and false Principles, false Reasonings, and false Quotations; but I wave all that to come to the main Body of the Work.

WHAT signifies his incessantly telling us, that Conformation is enough, and that the Proofs of Virginity are uncertain? Are we to judge of that? Are you, Gentlemen, to decide those two Questions? Are they not Questions of Art? And are we so unhappy as to have any Experience that Way? This is all the Answer I have to make to a Volume of thirty Pages; and this Answer is enough.

IT is thrown in my Dish, that of all the Authors who have written of Physick, I have quoted none but *Zachias*. I own, Gentlemen, I did not trouble my self to consult any other, unless perhaps *Dularent*, *Moriceau*, and *Ambrose Paraus*, who, I found, were Favourers of the Opinion that Virginitie is cognoscible: And this makes me have a Notion, that since the Council of the other Side have quoted them falsely for the Marquis de *Gesvres*, they may have done the same by all the other Doctors of the same School; and what confirms me in this Opinion, is, their not producing any fix'd precise Passage of them: They have only offer'd me a Bead-Roll of Names, most of 'em obscure and unknown; but they took great Care not to specify the Books wherein 'twas said they had handled the Question, much less the Chapter and Section. Would they have me fight against Names, against *Diamoir-brok*, against *Graaf*, against *Vanmilichen*, and a hundred others of the like kind, who are good for nothing but to make part of the Catalogue of the *Clavis Salomonis*?

WHAT I could do, I've done: I consulted the Masters of the Art, who told me, that all that can be gather'd from ancient Medicine, is, that the Hymen is no true Token, but that it is not the Hymen a Maiden-Head is judg'd by; that, as to the modern Physicians, they do agree concerning the Existence of certain Tokens; but that it is a Question they dispute *Pro* and *Con*, whether those Tokens are infallible. Thus the Doubts fall only upon the Infallibility; and what divides the School into two Sects, is the one's ascribing to the said Tokens a physical or almost physical Certainty, while the other allows only a moral Certainty, that is, an experimental Certainty.

But whether moral or physical, it signifies nothing to us; 'tis enough for us to say after *Hortman*, [pag. 46] Since the Councils and the Popes have approv'd of the Inspection of the Wife, we cannot, neither ought we to gainsay

gainsay it. It has likewise been receiv'd and tolerated in all Ages.

FARTHERMORE, whether the Proof which shall result from inspecting *Madam de Gesvres* will be certain or uncertain, 'tis the Searchers Province to determine.

BUT, say the Council of the other Side, this can never be any Thing more than a moral Proof; and moral Proofs are not admittable in a Question of Impotency. A fine Proposition, whose Consequence is this: The Church, who till now never judg'd of Impotency but upon moral Proofs, has been guilty of as many rash Actions as she has dissolv'd Marriages on the Foundation of a presum'd Impotency. The Doctors who have furnish'd her with those moral Proofs, were so many sacrilegious Soule-crowns. The Officials who rely'd on their Credit, so many blind Beetles and Reprobates. Only the Advocate of *Monfieur de Gesvres*, wiser than the Church, more religious than the Canonists, more prudent and more circumspect than all the Officials in the World, is come in the Dregs of Time, both to reform the Church, and to teach her Doctors, and enlighten her Ministers.

FOR my Part, Gentlemen, I confess when in the Books compos'd for *Monfieur de Gesvres*, I found Arguments that led directly to such strange Consequences; when I met in 'em certain extravagant Paradoxes, certain Illusions, certain sophistical Fallacies, at which the Stomach of a Christian Lawyer cannot but rise, I confess I thought it my Duty not to spare them; and therefore I sometimes rattled them, and sometimes shew'd the Ridicule of them.

MONSIEUR *de Gesvres's* Writer is offended at this. But may I not say to him in my Justification, that if we would be respected, we should first begin by respecting our selves? Now, the Respect which we owe to our own selves, consists not in a certain Gravity

vity of Stile, an Enemy to every Thing that is piquant; No, it consists in avoiding to protect Error, and especially an Error that oppugns Principles universally receiv'd.

WHEN Monsieur *de Gesvres's* Advocate shall respect himself in this Manner, I shall be one of the first to pay him the Homages that are due to his Merit.

M. BEGON, *Advocate.*
BENARD, *Proffor.*



Third and last P L E A

For Madam DE GESVRES against
Mons. DE GESVRES,

*Concerning the Report of the second Inspection
of the said Monsieur de Gesvres.*

Gentlemen,

THE Purport of my present Motion is, that since by the Report of the Visitation of the Marquis *de Gesvres's* Person, in pursuance of your Order, dated the 24th of last *March*, it appears that the said Marquis being a second Time visited, was found to be in the same State of Frigidity as he appear'd to be in, when he was first visited; and that therefore, there is no longer any Reason to believe that he is not absolutely Impotent: You will please to declare, that there has been no Marriage between the Parties; or at least, order, that my Client shall be visited by Matrons, or Midwives, to be nominated by the Parties, or else, by your selves, *ex Officio*, in presence

presence of the Physicians and Surgeons who inspected the Marquis *de Gesvres*.

I now present you, Gentlemen, with a new Report. By the outward Appearance of it, it seems to promise nothing new; but, narrowly look'd into, it leads directly to the Proof which I demand. This is what I hope to convince you of in a few Words, after you have heard it read.

But first, if you please, we'll begin with reading the Order which directed a new Inspection by Searchers deputed *ex officio*.

O R D E R

Of the 4th of March, 1713.

WE without Prejudice to the Right of the Parties in *principali*, and before we determine upon their respective Demands and Requests, having regard to the Motion of the Promoter, have order'd the Marquis *de Gesvres* to be visited anew, by such Physicians and Surgeons as shall be named by us, *ex officio*, who, in drawing up their Report, shall be oblig'd to express themselves minutely, concerning the Potency or Impotency of the said Marquis; and, in case of Impotency, to declare the Quality of such Impotency, according to their best Judgment, &c.

The REPORT

Made in pursuance of the same Order.

WE have, in an especial Manner, examin'd the exterior genital Parts of the said Marquis: We have observ'd, that the said Marquis is advantageously provided with all his Parts, each of which has the natural Consistence, Colour, Dimension, and Figure. But because Erection accompanied with Firmness and some Duration, is also absolutely necessary towards proving the virile Power; and because we did not observe any such Thing in the said Marquis, during our Inspection, we suspend our Judgment touching his Potency. We do not, however, infer, that there is Impotency in him, from our not having seen that Token of Virility; because it does not always appear, and there are Men, to whom the Presence of other Men is an Obstacle to the Appearance of such a Token. Therefore we cannot decide concerning the Potency of the Marquis de Gesvres, it being impossible to judge of such a sort of Things, without the Tokens indicative thereof. It were to be wish'd, that the Marquis de Gesvres could have Erection in our Presence, at some other Time, and in some other Place more favourable to him; we might then decide concerning his Condition.

What a difference there is, *prima facie*, between the Style of this Report, and that of most of the others which I have seen! In them there runs throughout a Vein of Simplicity and Brevity: In this there's nothing but Reasonings, Reflections, Wishes, and Desires. One would swear from the Strain of it, that the Searchers are discussing, rather than judging, a Point of Impotence: But when it is more nearly consider'd, there appears to be in it mighty Mysteries, and momentous Instructions.

So soon as the Searchers had laid down for a Principle, that they could not judge of a Man's Potency without a sensible Demonstration of its principal Token; they thought it their Duty to point out to the said Marquis the Methods and Expedients, by which he might exhibit that Token to them. For this purpose they lay aside the Language of Judges and Searchers, and talk to him like cordial Friends; they officiously give him their Advice, to the end that such Advice might contribute either to win him the Cause, in Case he follow'd it with Success, or to convict him of Impotency, in Case he declin'd following it. If we judge you, said they to him, *by the Rule in quo statu te invenero, in eo te judicabo*, you must be condemn'd; for you're in a State of Reprobation. But because you may tell us, that your Hour is not come; because you may say, that a Master of an Office, and four Searchers, are no very proper Objects to put Nature in a good Humour, we are willing, for this time, to accept of that Excuse; so not being able to adjudge you Potent; on the other hand, we abstain from declaring you impotent: However, if you will follow our Advice, we will tell you what you shall do. You shall call us into your Antichamber for a certain Number of Mornings together. During which Time, at some commodious Hour, and within the Privacy of four Curtains, you shall wait for that favourable Glance of Nature's Eye, which she never long refuses to Persons of your Age, who are not entirely under her Displeasure: And when that happy Moment shall be come, we will be in the way, and ready to be Spectators and Judges of the Alteration she shall have wrought in you.

THIS is undoubtedly what the Searchers meant, when they said, *It were to be wished, that the Marquis de Gesvres could have in their Presence, such an Erection as they therein describe, even tho' they waited some more favourable Opportunity for it; and that then they could make a Judgment of his Condition.*

WHAT

WHAT can be the Meaning of such a Wish as this in a Report? Are Searchers called upon to form Desires? Is it their Trade to wish? Is it not rather to instruct? If then our Searchers are turn'd Wishers, their Wishes must be instructive. Now 'tis plain, that all the Instruction that can be derived from their Wish, is that which I just now took notice of: Therein therefore consists the Fruit which we are to gather from their Report.

IN the next place, Gentlemen, pray take notice that that Instruction is twofold.

THE first Part of it is directed to the Marquis de Gesvres, and the next to you.

TO the Marquis de Gesvres, they say: If, as you pretend, Nature has given you the Capacities essential to a Husband, you would do well to follow our Advice.

TO you, they say: Gentlemen, if Monsieur de Gesvres does not follow our Advice, you may depend upon it, he has not the Capacities necessary to a Husband. And in this, who can but admire at the Wisdom of the Searchers, who, to discover Impotency, make use of the very Obscurity with which Impotency covers it self.

'Tis wonderful, likewise, with what Art they lead you to the Proof which I demand; that is, to the detecting the Husband's Impotency by visiting the Wife.

WHY, think ye, did they insert in their Report, the Notion which favours so little of a Searcher; That *there are some Men with whom the Presence of other Men obstructs the Appearance of that Token which is wanting to the Marquis de Gesvres?*

SURELY, it was not to induce you to commit the Inspection of the Marquis de Gesvres to Persons of another Sex. They did it, therefore, to let you know, that as he will always be inspected and examined by Men, there never can be a perfect Conviction
of

of his Condition fetch'd from the said Inspection of his Person, unless you add thereto the Insight that may be gain'd from the Person of the Wife.

IN the next place, Has the Marquis de Gesvres made any use of the Lesson which the Searchers taught him? Has he put himself in a Way of spreading forth in their Sight the Donatives which he boasts he has received from Nature? You know whether he has or no, Gentlemen; you who have given him three Months Leisure to make Preparation for such a Spectacle.

INSTEAD of shewing you what Nature had given him, he still brings you nothing but Reasonings about what she ought to have given him. This is manifest by his presenting you the next Day after the Report, a Petition, which gives Indications more of his Despair than his Confidence. For the Purport of it is to this Effect: That *since by the new Report it appears he is Impotent, you would please to reject my Client from her Demand to have her Marriage declared null.*

I DON'T mean here to dispossess him of that Notion, viz. *It appears by our Report, that he, the Marquis de Gesvres, is not impotent.* 'Tis an agreeable Dream which pleases him, and does no Body any Hurt: So 'tis but just to leave him in the Enjoyment of it. But I say, that if he did not dream that he saw in the Report what he pretends to find in it, he must necessarily mean, that by the Report it does not appear he is Impotent; as indeed the Report does equally abstain from judging him impotent, as it does from judging him Potent: But there is a vast Difference between saying, *Impotence does not appear by the Report*, and saying, that by the Report, *it appears there is not Impotence.* This last would utterly exclude Impotency, and thereby establish Potency; whereas the first, which alone is true, leaves the Potency and Impotency in Suspence and Doubt.

PRESUPPOSING, therefore, that Monsieur de Gesvres meant to let you understand by his Request, that by the Report, he was not convicted of Impotency; it is easy to see, that the Foundation which he gives to his new Motion, is no other than an old Argument, which he takes up from the Shipwreck'd Remains of his former System, which center in these following Propositions: That in Accusations of Impotency, the Wife is the Plaintiff; that it lies upon her to prove the Point, which she lays down for a Foundation of her Complaint; that she ought therefore to make out the Husband's Impotency by a real and physical Proof, derived from the very Person of her Husband; that otherwise she is to be thrown off of her Demand, by the Rule *Actore non probante, vincit reus*; when the Plaintiff proves nothing, the Defendant carries it: That here Madam de Gesvres cannot prove the Impotency by a real and physical Proof, resulting from the Marquis's Person, since after two successive Inspections, the Searchers concluded their Reports, by declaring, that they knew not what Judgment to make of him; and that consequently all that remains to be done, is to reject her Complaint.

TO this wonderful Argument, which is only a Quirk of Law, I answer, in the first place, that we must cut off this fundamental Proposition, namely, that all the Proofs of Impotency are to be fetch'd from the Husband's Person. For it is what is taught by no Text, Gloss, Doctor, Canonist. So far from it, there is neither Canon, Canonist, Gloss, nor Doctor, but have taught the direct Contrary: Therefore I utterly deny the Maxim.

I GRANT therefore, that the Wife is to prove the Point of Impotency, since it is the fundamental Point of her Demand; but then the Husband is to prove the Point of Potency, since that is the fundamental Point of his Defence.

FOR

FOR if by the Rule, *Affore non probante, vincit reus*, every Plaintiff who does not make out his Complaint, ought to be cast; by another Rule, *viz. In exceptione Reus fit Affor*, every Defendant, who does not prove his Defence, must necessarily be condemned: Why so? Because when he defends, he is reduced to the Condition of a Plaintiff, 'tis he must prove, *in exceptione fit Affor*.

THIS being taken for granted, Madam de Gesvres asserts, that her Husband is impotent. This is the Point upon which she grounds her Demand to have her Marriage declar'd Null: This is what she says, and what she offers to prove.

MONSIEUR de Gesvres opposes to her, by way of Defence, that he is Potent, and so Potent, that he has consummated his Marriage an infinite Number of times: He consequently is obliged to make out the Point of Potency, as the Fundamental Point of his Defence.

I GRANT, could he prove his Potency, he would exclude me from proving his Impotency: But as he has not hitherto put himself to the Trouble of proving his Potency, I infer, he cannot hinder me from proving his Impotency.

OF all the Proofs that were ever invented for the Discovery of Impotency, the Usage of this Kingdom has retained none but the Inspection of the Husband and that of the Wife.

BY the former, the Husband proves his Potency, and thereby repels the Reproach of Impotency, thrown on him by his Wife. By the latter, the Wife proves the Impotency, when the Husband demurs, or refuses to prove his Potency; and then the Proof which the Wife's Person furnishes, is an infallible Proof, because it is warranted, not only by the Condition the Wife is in, but likewise by the Impossibility the Husband is under to shew that he is Potent; a Thing which is never impossible to any but Impotents.

HOLD

HOLDING therefore to these Principles, which every Body sees are incontestible, I say to Monsieur *de Gesvres*, I am Plaintiff, it is true: I am to prove the Impotency; that likewise is true. But how? unless by the Proof that is in my self; and this Proof I am ready to produce. Will you hinder me from making use of it? Do you then yourself produce the Proof of Potency, which must be in you, if you are really Potent. I find in myself a Proof of your Impotency, exclusive of Potency: I am ready to give it in Evidence. You pretend for your Part to have in your Person a Proof of Potency, exclusive of Impotency: Out with it then; and in a word, make Proof of your Potency by your Person, or suffer me by mine to verify your Impotency.

WHAT Answer can be made to this Argument? That which renders it yet more irrefragable, is, that as Potency manifests it self by exterior Signs in all the Subjects where it exists, it is impossible it should exist in such Subjects where it never manifests it self.

TELL me not therefore any longer, that it does not appear by the Report that you are impotent, and that that's enough for you; for I answer, that it matters not any thing, that the Searchers avoided to declare you expressly impotent, if you your self declare your self so; and if in avoiding to shew your *Turpitude*, you reveal your *Turpitude*, (here the Word *Turpitude* is put in a Scripture-sense, that it may not be taken in ill Part.)

I ANSWER you likewise, that when the Searchers bid you shew *Erection*, they condemn'd you if you did not shew it. They made you Judge in your own Cause, they put your Fate into your own Hands; after which, would it not be a very unhappy thing for you to betray your Cause if it be good, and to take pleasure to make your Fate miserable when you your self are Master of it?

I GO farther, and say, Conceal as much as you please the Proof of *Turpitude* which is in you; but you shan't hinder me from producing that which is in me, especially since that becomes a convincing Proof by your refusing to produce yours.

FOR this is what I would beg of you to consider, Gentlemen, and always to take along with you, a Husband resisting, a Wife offering herself to the Proof.

THOSE two Objects ought always to walk together; for 'tis their Conjunction that makes their Strength, because they have between them the Relation which two Effects proceeding from the same Cause have. Why does the Husband withdraw his Person from the Proof? Because he is sensible of his Impotency. Why does the Wife offer herself to the Proof? Because she knows her self to be a Virgin, and because her Husband's Impotency is the Reason of her Virginity. Thus these two Effects meet together in Impotency, as in their Source and common Cause; which gives so thorough a Detection to Impotency, that it would not be more certain if it fell within the Compass of the Senses: For how can any one doubt of a Cause, when its two principal Effects are apparent;

THO' we have already said it several times, we will not be afraid to repeat it, since it is a fundamental Reason. The Offer made by Madam de *Gesvres* to prove her Husband's Impotency by her Person, is no new, unheard-of Offer. 'Tis offering of a Canonical Proof, a Proof authoriz'd by universal Usage, and by the constant Practice of all Ages and Places; a Proof, in short, that is precisely instituted for the Case now in hand, and precisely made against Husbands well conform'd. For as to the Non-conform'd, they are already judg'd, *jam judicati sunt*; and there needs no Proof against them, since they carry in themselves the visible Character of their
Repro-

Reprobation. Now this being so, why should *Madam de Gesvres* be refus'd a Relief which the Canons and the Custom hold out to her; a Relief which was devis'd only for the Case in which she is?

The Partisans of *Monsieur de Gesvres* begin to feel the Force and Invincibleness of these Reasons. So long as their Doctor, and, which is worse, Reformer of the Law, believ'd he should make his Paradox go down, *that Conformation was enough*; so long as he flatter'd himself with the Hopes of getting the Canons corrected, they thought the Cause could not be judg'd expeditiously enough. But when they saw their Maxims knock'd o'the Head by the Pleading of *Monsieur the Promoter*, condemn'd by your Sentence of the 4th of *March*, which, maugre the good Conformation, order'd a new Inspection; in short, pro-scrib'd and anathematiz'd by the unanimous Suffrage of the four last Searchers, who therein sticking to the Principles of the four first, expressly declar'd, *that Conformation concluded nothing*; when, I say, the Favourers of *Monsieur de Gesvres* saw their System routed, then they plac'd all their Safety in retarding the Thing, and in flying the Pit.

ONE of their Stratagems for gaining of Time, was to feign in *Monsieur de Gesvres* a tardy, slow Nature, which waits 'till Years bring on that Strength and Agility, which in her self she wants the Principle of. Who knows, say these Speculators, but that there is in this young Lord a Bud which stands in need of five and twenty Years to ripen it? For my Part, Gentlemen, I confess I always look'd upon this Notion as an Amusement of the Tea-Table, where the Imagination takes such strange Liberties; and for this Reason I always despis'd it, tho' 'twas grown very frequent in the Mouths of a great many People; but because the sacred and pious Timidity of some religious Men may be afraid even of the Phantoms that
proceed

proceed from the Licentiousness of Conversation, you'll give me leave, Gentlemen, to drive this Apparition away with one Puff or two at least.

The Course of Nature, and the Time she takes in her Operations, are only discoverable from the sensible, daily Experience which Men have thereof. Now, this same Experience teaches us, that at fourteen Years of Age the matrimonial Capacity begins to break out. For which Reason the Church admits Persons of that Age the Sacrament of Marriage.

IT is true, there are some slow lagging Natures : but even their Tardiness extends not beyond fifteen, sixteen, or at most seventeen. And therefore the Civil Law has fix'd compleat Puberty at eighteen, as a Period after which Nature may indeed add some Augmentation to her Donatives, but not grant any new ones, or create in Man new Faculties.

SUCH are the Rules receiv'd by the whole World, equally admitted in Physick and in Law, taught by all the Canonists, but principally by *Panormitanus* and *Hosiensis*, upon the Rubrick, entitled *de despons. impub.* and lastly, confirm'd by above five thousand Years Experience ; nor can it be prov'd by any Example, that this Experience ever fail'd.

NOTWITHSTANDING all this, here are some People sprung up but Yesterday, who hammer out a System of the Brain, who describe Nature to be slothful, the Humours stagnating, and waiting for the necessary vivifying Seed, which is concocting either in the Liver, or in some other Kitchen which they place I know not where. They talk as if they had seen every Thing they speak of : But examine this Phantom near-hand, you will find that it consists in nothing but in Images painted by the Fancy ; and that by often representing them to you, they endeavour to make them so familiar, that you may take them for Realities ; which is the same Thing, as if by frequently

quently setting before your Eyes the Figure of a Centaur, they meant to create a Doubt in you, whether such a Species of Creatures were not possible.

BUT let us suppose those Centaurs to be possible; let us suppose, that Nature can be so ill a Pay-Mistress, as not to pay 'till five and twenty Years a Debt that was due at fourteen, or, at farthest, seventeen or eighteen; it will, at least, be granted me, that it cannot happen without an Irregularity next kin to a Prodigy.

NOW I ask seriously, whether the pretended Possibility of a Prodigy ought ever so little to suspend our Judgment, and what Judgment can be given of any Thing if the Possibility of a Miracle stays us? If we will believe Books, it may happen, that a Girl may change Sexes, and be suddenly converted to a Boy. *Jovianus Pontanus* gives several Examples of it in his Treatise *de Rebus Mirabilibus*, as does likewise *Peter Massy* in his *Lectiones*; and *Montaigne* says, that such a Transmutation of Sex did happen in his Time, and in his Country, in the Person of a young Woman call'd *Mary Germain*. Must we therefore needs fear, that when we marry a Maiden, she may afterwards become a Boy? And must we, before we marry her, examine whether the feminine Condition is well confirm'd? What Folly would this be? but yet this Folly would become rational, if in the present Case we were to fear the Possibility of an Impotent's being transmuted into a Potent; for, according to the Laws of Nature, it is much easier for a Girl to become a Boy, than it is possible for Impotency to be chang'd into Potency. The one is only a Change of Form, caus'd by a Change of Situation; whereas the other is a Change of Substance, which requires a Creation of a new Substance, that is, a Cast of the Hand of Omnipotence.

LET

LET us therefore drop all these imaginary Possibilities, all these Maybe's which may never be; let us stick to our Rules, since they are form'd upon the Rules of Nature; and therefore I answer those who say to me, *Shew by Examples, that the Church has dissolv'd the Marriage of a young Man of one and twenty*; Do you your selves shew, say I, by Examples, that she ever refus'd to dissolve the Marriages of Impotents under five and twenty. It is not incumbent on me to prove my Thesis by Examples; for 'tis enough for me, that my Thesis is conformable both to the Course of Nature, and to the Rules of Law; it lies on you, who pretend not to be bound by these Rules; it lies on you, I say, to make good the contrary Thesis, if not by Reasons and Authorities, (which is impossible) at least by Examples well warranted, and very numerous; for as for me, 'tis enough that the Rules are on my Side.

AND now, let us follow the other Steps of *Monfieur de Gesvres*; (for, in my Opinion, in Questions of this nature, we do not give sufficient Attention to the outward Conduct of the Husband, tho' by such Conduct may be easily known the inward Judgment he forms of himself; and such Judgment is, at least, as sure as that of the Searchers) I say therefore, let us follow the other Steps of *Monfieur de Gesvres*.

WHEN he saw, that his Phantom of Potency in the Bud began to lose Credit, he then betook himself to Subterfuges. Sometimes a Judge is out of the Way, sometimes a Counsellor is sick, sometimes that Counsellor had his Brief but last Night, then a Journey to *Rambouillet*, the Opening of the Campaign; all this he makes Use of for an Excuse to avoid coming to the Merits of the Cause. By these Delays he has manag'd Matters so well, that now towards the End of *July* we are got no farther than to a Hearing upon a Report of Searchers of the 3d of *April*; and my speaking

speaking thus, is not so much to complain of his hanging off, for that's natural, as to hint to you, Gentlemen, the long Space of Time he has had to improve the Searchers Advice, and to give them that ocular Information which they wanted of him. Can you really think, that if it had been in his Power to give them such Information, he would have notify'd to us one after another the Instruments and Petition which you are going to hear; for they are Pieces of too great Curiosity not to be made publick?

ANNO 1713. June 23. *At the Request of Messire Joachim Bernard Potier, Marquis de Gesvres, living in the New-Street of St. Austin, at the Hotel de Tresmes, which he had made the Place of his Abode; I Peter le Counte, Tipstaff in the Chatelet of Paris, did notify and declare to Dame Mary Magdalen Emilia de Mascranny, Marchioness de Gesvres, at the Place of her Abode, the House of Madam de Caumartin, in Michael le Comte-Street, by speaking to the Porter of the said Dame de Caumartin, who refus'd to tell me his Name, that the said Marquis de Gesvres protests against all Proceedings which the said Marchioness de Gesvres caus'd to be this Day signify'd in order to be argu'd next Monday upon a provisional Demand by her form'd in the Court of Requests: Forasmuch as she is first to satisfy the Order obtain'd in the Chatelet the 17th of March, 1712, according to which she was to retire to the Convent of Calvary, in the Faux-bourg St. Germain: Besides, the said Marquis de Gesvres is setting out for the Army in Germany, his Regiment being commanded thither; and therefore protests and declares against whatever may be done by any Jurisdiction whatsoever, during his Absence, and has left the present Copy. Sign'd,*

SIMONT.
LE COMTE

Anno

the Lady de MASCRANNY. 311

ANNO 1713, June 27. *At the Request of Messire Joachim Bernard Potier, Marquis de Gesvres, &c. I, Peter le Comte, did declare to Dame Mary Magdalen Emilia de Mascranny, Marchioness de Gesvres, dwelling at the House of Madam de Caumartin, by speaking to Madam de Caumartin's Porter, who refus'd to tell his Name, that he protests and declares null all the Proceedings of her against him, as well in the Court of Requests, as in any other Court. Forasmuch as she is first to satisfy the Order du Chatelet of Paris, dated March 17, 1712, according to which she is to retire to the Convent of Calvary, Fauxbourg St. Germain, from whence she withdrew herself upon Occasion of answering the Interrogatories in the Officialty; and to this End, I summon'd the said Lady in Manner abovesaid to retire into the said Convent, and did declare likewise, that the said Marquis de Gesvres is preparing to go to his Regiment, which is commanded to join the Army in Germany, &c. Sign'd*

SIMONT and LE COMTE.

*To Monsieur the Lieutenant for Civil Causes,
the humble Petition of Francis Bernard Po-
tier, Marquis de Gesvres,*

Sets forth,

THAT by your Ordinance dated the 27th of March 1712, you order'd, that Madam de Gesvres should be oblig'd to repair to the Convent of the Nuns of Calvary. In Execution of this Ordinance she was there some Time, till taking Occasion of an Interrogatory which she was to answer to before the Official, she went from the Convent, and never return'd since. This oblig'd your Petitioner to prefer a Petition to you, whereby he desir'd, that the said Lady might be oblig'd to return thither again. She excus'd herself, under Pretence that she was sick, and could not be carry'd thither. You therefore order'd, that she should

should be seen and visited by two Physicians, whom you nam'd ex officio, who gave their Opinion, that before the Lady was carry'd to the said Convent, it was necessary to wait 'till the Month of March, when the Sun in his Return might give her more Strength than she then had. Your Petitioner staid 'till then, and much longer too; but seeing she made no Preparation to return to the said Convent, tho' he has caus'd her to be serv'd with two Summons in Writing for that Purpose, he is oblig'd to prefer this Petition to you, and prays, that you would be pleas'd to take Order therein, or else that your said Petitioner may be permitted to take her away, and carry her thither, &c. Sign'd

R I G A U L T.

Let her be cited into our Office the next Court-Day at Two-a-Clock in the Afternoon. Sign'd the 18th of July 1713.

D. A R G O U S E S.

ANNO 1713. the 19th Day of July, by Virtue of the Petition and Ordinance hereon endors'd, at the Request of the Marquis de Gefvres, I Anthony le Moine summon'd the Marchioness of Mascranny, speaking to the Porter where she lodg'd, to appear next Friday at Two-a-Clock in the Afternoon before the Lieutenant for Civil Affairs, &c. Sign'd

L E M O I N E.

T H U S you see what Pains Monsieur de Gefvres takes to avoid a Hearing. Formerly he disputed with us the Glory of serving Summons; now he protests against the Summons we serve on him. Formerly the War in Flanders was no Hindrance to our prosecuting a Judicial War here; now the War in Germany is a Reason for forcing us to grant him a Suspension of Arms. Formerly, it was no great Matter whether Madam de Gefvres was at Madam de Caumartin's House, or in a Garret of Calvary, and the Progress of the Cause

Cause was not to be retarded for that; now Madam *de Gefures* must be silenc'd, unless she repairs to her Garret there to breathe her last.

DOES Monsieur *de Gefures*, (who, if his Cause were good, might win it at once) does he, I say, pretend by this Dilatoriness to persuade People that it is good? Does he pretend to mimick the Husband, by disquieting himself about the Place where his Wife is to lie; and does he think that People will do him the Honour to take him for a jealous Man, afraid lest his Wife should abuse her Liberty? No, no, the World is not to be bubbled at that Rate. Why then all these Bustlings, these Agitations, these Inquietudes? All mere Despair, tho' he sets the best Face upon it that he can. He has heard say, that Marriage is a Source of Suspensions, he therefore must act a suspicious Part. He sees that all Husbands receive the Rents of their Wives Fortune; he therefore must continue to do the like, and therein he imitates them better than in any Thing else. For when he has attempted to mimick them in other Things, every Body knows how he has come off. But whilst He shines at the Opera, at the Play, in the publick Walks, and has at least the Consolation of hearing People say, *'Tis a thousand Pities*, the mournful Marchioness *de Gefures*, with all her Innocence and all her Vertue, is forc'd to consume her self in Obscurity in her Chamber, where she supports her Life by Art alone; and happy would it be, if even that Remnant of Life was not envy'd her, and in Danger to be industriously destroy'd by forcing her to change her Abode. 'Tis in your Breast, Gentlemen, to put an End to so many Grievances: they have lasted too long; nor will such upright Judges as you are incur that Reproach of the Scripture, *Justus perit, & non est qui recogitet.*

M. BEGON, *Advocate*

M. BENARD, *Proctor.*

The CASE of The Third REPLICATION

For Madam DE GESVRES,
Against Mons. DE GESVRES.

GENTLEMEN,

I Had, before this Hearing, a great many Proofs of Monsieur de Gesvres's Impotency; but none of them all came up to that which I am furnish'd with from the Plea which lately came to my Hands; for, in short, what can you think, when you hear Monsieur de Gesvres calling out from the Banks of the Rhine? *Come on, inspect me, search me as much as you please.* What, I say, can you think of him, when you hear him talking thus, after having upon the Banks of the Seine done nothing but cry out, *What signify all these Visitations? To what Purpose all these Enquiries? I have Consummated, is not that enough?*

I BEG, Gentlemen, that you would take this along with you; 'tis above fifteen Months since the first Searchers told him, *We can decide nothing, because we do not see the Token which must determine us*; which was the same Thing as if they had said to him, *Shew us that Token.*

BE pleas'd likewise to remember, that for above a Year, in order to oblige him to satisfy the just Curiosity of the Searchers upon this Head, I have provok'd him and spurr'd him in this Court by the most urgent Challenges; so urgent, that he was forc'd to leave the Lists, and by a strange Kind of Desertion, oblig'd to fly to the Army.

IN the next Place remember, that in this admirable Writing, which for some Time his Friends have been to buoy'd up with, he plainly declar'd, not only to you, Gentlemen, but likewise to all the World, that they might visit him thirty times if they would, but they would always find him in the said Condition.

AFTER this, call to Mind the inflexible Obstinacy with which he disguis'd his Concern at the Provoca-
tions

tions of the contrary Party, and despis'd all the Exhortations of his own. Let it not be forgot how he intrench'd himself in his Distinction between the *natural* and *provok'd* Motion, as if only the latter had been requir'd of him; and as if a sensible and ocular Demonstration of the former had been absolutely impossible.

THE N present to your selves that plain, that easy Expedient which Mr. Promoter propos'd in his Presence for putting the Searchers, as one may say, in an Ambuscade, and planting them as Spies of the natural Motion. Then follow his Steps, and see whether he has put this Expedient in Practice.

OBSERVE, in the last Place, that the new Searchers having approv'd of this Expedient; and having, under the Appearance of a Wish artfully suggested to him to make Use of it, he shut his Ears to their sage Council, and neglected to comply with Desires which were so much for his Good.

AND how has he spent the four Months which have elaps'd since the last Report? How has he spent them, I say, unless it be in contriving Subterfuges and Evasions, in shuffling us off, and drawing the Thing into Length, 'till the opening of the Campaign open'd him a Way to the Army, and afforded him an Asylum against the Searchers and their Visitations.

AND now being in the Army, Gentlemen, you hear with what Courage he talks; he offers himself to all Manner of Proof which you shall please to have him undergo.

Is not this like one of those heftoring Bravos who creep into a Corner when the Enemy is near, and talk of nothing but killing and massacring when he is at a Distance? This is undoubtedly the natural Image of Monsieur *de Gevres*: He hopes by this Stratagem, if not to gain his Cause, at least to gain Time: He fancies, that with this Ostentation of a feign'd Intrepidity, he may induce you, Gentlemen, to order new Inspections, which will not be over in six Months,

and perhaps never ; since, in short, it is not impossible but in the secret Resolutions of his Party, he is to be sent to some far distant Place, there to wait 'till the Death of *Madam de Gesvres*, which he hastens all he can by the Disquiet he gives her about her departing from *Calvary*. But would you know, Gentlemen, whether the *Marquis de Gesvres* is sincerely desirous to stand the Hazard of new Probations ?

CONSIDER, I beseech you, that it is not he who speaks ; you see no Petition sign'd by him, no Procuration on his Part. What Warrant therefore have you for his Courage, and how can you certainly know that he promises any Thing to himself ? You have nothing for it, but only the blustering Words which you just now heard. But that is not his Courage, 'tis his Advocate's. Ask that Advocate why that haughty Spirit sunk so of a sudden in the petitionary Part of his Motion ? Why after so much Noise and Bustle he was forc'd to conclude it as before ? And why he neither offer'd, on his Client's Part, to present himself instantly to new Probations, nor demanded to come to the Trial of it ? By this you will know how to distinguish a Braggadocio from a truly gallant Man.

AND that the Comparifon of a Bully may be more compleat, be pleas'd to observe, Gentlemen, that the Vanity of such Sort of Swaggerers is always to procure Witnesses, who may blaze abroad their mighty Actions, as if they had been Spectators of them. And even so has the *Marquis de Gesvres* done.

HE appeals to two Persons, one of which he is very cautious in naming, and only speaks it in a Whisper, and then cries out, * *They have seen it, they have seen it ; creditable Men, they have seen it.*

* *These are the very Words of a certain Relation of the pretended Island of the Papamanes, in an ancient well known Satire. We grant that the Author whom the Words are taken from, is no grave one ; but it must likewise be said, that the Object on he answers is much less so.*

BUT

BUT is it not strange, that the Marquis *de Gesvres* should shew to those two Persons a Thing which he could not shew to the Searchers in eighteen Months? for so long the Cause had lasted. If this Person whom he appeals to, is an ordinary Man, his Evidence is of no great Authority; if he is of a high Condition, either for Rank or Birth, he must be very much in the Marquis's Interest to stoop so low as to do the Part of a Searcher by him; and then too we object against his Evidence, on Account of his Zeal to serve the Marquis. The Respect I have for Men of Birth and Rank, makes me incapable of thinking that that Friend invented the whole Story; but oftentimes thro' Zeal we give Way to Deception, and take Pleasure in being impos'd upon.

As to that other Person whom he names, he never saw any Thing more than the Searchers saw; a fallacious Conformation, and nothing more: But it is scandalous to answer such Proofs; and I know not whether it is not more shameful to confute them, than to offer them. I therefore wave all that, and say, that if our Bravo found in him such Proofs of his Vigor, he needed not have recurr'd to borrow'd Evidence; for as great Captains are never us'd to take out Certificates of their Valour, so was it never known, that those who were really Men did hire Preachers to prove their Virility. All the Use that Monsieur *de Gesvres* can make of these little Tricks, is, to make People believe, that even according to his own Argument, he is not one of those whose savage Nature is afraid of the Aspect of a Man; and from thence it is easy to conclude, that he is not hinder'd by that same Nature from displaying himself to the Eyes of the Searchers.

M. BEGON, *Advocate*

M. BENARD, *Attorney.*

PROOFS

PROOFS of this Proposition,

V I Z.

That the Usage of the Kingdom (of France) has reduc'd the Proofs of Impotency, to the sole Inspection of the Husband and the Wife.

Against certain Objections tending to introduce Triennial Cohabitation.

I DON'T reckon the Oath among the Proofs of Impotency, because an Oath is no Proof; and if there are any who think otherwise, they need only consult *John Andreas* and *Decius* upon the Rubrick de *Probat.* among the Decretals, with all the other Doctors, vouch'd by *Vivius* in his *Vulgar Opinions*, in *verbo Juramentum*.

NEITHER do I reckon the *septima manus* among the Proofs of Impotency; for besides the Difficulty of knowing it, it is no more than an Oath; nay, such an Oath as does not take place, but when the Husband confesses an Impotency, which gives a just Occasion to say, that it is not so much a Proof, as a Corroboration of a Proof.

THERE remains therefore nothing but the *Triennium*, which can render the Proposition doubtful. And upon this, I say not that the *Triennium* is abusive, [*i. e.* out of the Jurisdiction of the Ecclesiastical Judge, which I take to be the Meaning of the Word *abusue* in French,] but that it is neither practis'd nor practicable; nay, that it rarely happens to be in the Case for which the Apostolick Constitutions introduced it.

IF the *Triennium* were practis'd, it wou'd be seen by a great Number of Sentences or Decrees; but in a hundred Years there can but two be instanced, that in 1634, and that in 1675.

THE

THE first gave Occasion to an Appeal as abusive; and 'tis certain upon that Appeal, the Judgment was that it was not abusive: But it is one thing to be non-abusive, and another thing to be non-practised; and because it was resorted to in a private Case, where it might have its Use, it does not follow that it is commonly and daily practised.

As to the second Example, which is that of 1675, it is in the Case of a Wife, who was not a Virgin, but confess'd that her Marriage had been half consummated. When People happen to be in these Circumstances, the *Triennium* may do very well; because on the one Side, the Husband gives great Hopes; and on the other, the Wife, who has nothing to lose, has likewise nothing to fear. This Reflection, as important as it was, has been neglected by the Author of the Objections, who pass'd it over in Silence. So that we are obliged to refresh his Memory, and to tell him into the Bargain, that a couple of Precedents in a hundred, nay, perhaps two hundred Years, do not qualify a Man to say, that a Proof is in Usage.

THE *Triennium* is not practicable for two Reasons, both upon Account of its Inutility, and because of the unsurmountable Difficulties which make the Practice of it impossible.

As for its Inutility, it is evident; If the Wife, who complains of her Husband, were a Widow, or corrupted before her Marriage, how, after three Years, can we be certain whether the Marriage was or was not consummated? In that Case, therefore, the Question is to be resolved by the Oath of the Parties: But if one affirm and the other denies Consummation, whom must we believe? And if they tell me, that, in such a Case, we are to acquiesce with the Husband's Oath, as being *Head of the Wife*; I answer, that rather than make so great a Question depend upon the bare Oath of one of the Parties, it

were better to reiterate the Inspection of the Husband so often, that the Searchers might be assur'd of his Condition.

IF the Wife was a Virgin when she married, and continue so after the three Years, then the Husband's Impotency may very well be inferr'd from her Virginity: But this Case would be a Miracle, for the Reasons set forth in the preceding Writings.

AND if she ceases to be a Virgin, what will you infer from thence, while the Husband pretends that she has lost her Virginity one Way, and she, that she lost it another Way? So that we must again resort to the Oath; which being so, is it not more reasonable to have recourse for once to the Inspection of the two Parties, to judge of their Condition, than to trust to a bare Oath?

WHAT Success, after this, are we to hope for, from the transient Conjunction of two Persons who abhor each other? What Mediums, what Precaution can we take to screen the Wife from the Husband's Fury? And is it in the Power of human Wisdom, to secure her from the Danger she runs when she is a Virgin? 'Tis so difficult a thing, that the Author of the Objections, after having made a Promise of some Precautions against this Peril, could not devise so much as one.

NOW 'tis this Inutility, accompany'd with so many Inconveniencies, which has caus'd the *Triennium* to be laid aside, and fall into Disuse, *in desuetudinem*.

BUT there are other Reasons fetch'd from the Canons themselves. Those Canons were not ignorant, that the Cohabitation of an Impotent with a Wife is an Abomination: And therefore they never prescribed the Usage of the *Triennium*, but in Case of extreme Necessity, and where all other Proofs were wanting; *si frigiditas prius probari non potuerit*, if Frigidity could not be prov'd before. Now this Case never happens but when the Husband gives Tokens of Potency,

Potency, tho' imperfect ones, and when at the same time the Wife is no Virgin. For when the Husband shews no Sign of Life, and when the Wife is a Virgin; these two things being put together, do make the Proof of Frigidity, even tho' they had not dwelt together three full Years, provided their Cohabitation lasted a certain Space, according to the Prudence and Pleasure of the Judge.

THIS is certain: In *France* the Searchers are the first, nay, properly the sole Judges of Impotency; and to prove this, is it not evident, that if there had been a Report which had expressly declared *Monfieur de Gesures* either Potent or Impotent, the Cause would have been at an end? Therefore these second Judges, that is to say, the Officials must acquiesce in a decisive Report: For then the thing is made out, *Frigiditas prius probari potest. Ergo, &c.*

NOW, if after two Inspections of the Husband have been order'd, you should order the Wife likewise to be inspected, thereby to enable the Searchers (from inspecting them both) to make a decisive and definitive Report, in all likelihood those Searchers would not only declare that there is Impotency, but they would likewise determine what sort of Impotency it is. Whatever happens, it is an Essay that's indispensably necessary to be made before you proceed to the *Triennium*; because 'tis sufficient to exclude the *Triennium*, that *Frigiditas prius probari possit*, Frigidity may be prov'd before; and because we may always say *prius probari potest*, it may be prov'd, so long as we have not tried all the Proofs which are Canonical & in Use.

EXPERIENCE has hitherto taught us, that when all the Proofs are exhausted, the Searchers determine the thing, either from the sole Inspection of the Husband, or from the joint Inspection of the Husband and the Wife.

Cabu and *le Grosse*, tho' regularly conformed, were condemned upon the sole Inspection of their Persons:

Mer-

Mercier, Hubineau, and Verdin, upon the joint Inspection of their own Persons, and their Wives. And thus it is, that the Searchers take their Measures when they meet with no Instructions to help them; and when once they they come to a Resolution, Potency or Impotency is proved. And therefore *Verdin*, who demanded the *Triennium*, could not obtain it, he being told, *Frigiditas probata est*, Frigidity is prov'd.

ANOTHER Reason which has brought the *Triennium* into Disuse: The Searchers having always come to a Determination, if not upon visiting the Husband alone, at least, upon visiting him and his Wife, the Impotency was held, *ipso facto*, to be made out, and the *Triennium*, which was before impracticable, nay, dangerous and pernicious in itself, was, after this Proof, deem'd a superfluous Evil; because it is needless to prove by the *Triennium*, what is already proved by a Report of Searchers.

As, therefore, all the Proofs of Impotency do depend upon Searchers, we had Reason to say, that they were reduced to the sole Inspection of the Husband and Wife: And we advanced this Proposition with more Confidence, because we only spoke after the Attorney-General, Monsieur *Lamoignon*, and he himself spoke according to the Usage. One would think we ought to fear nothing, when we follow'd so great a Master, and yet we could not escape being cavill'd at; but this Cavilling does not fall upon the Author of the Proposition, it falls upon one of the most deserving Magistrates that ever was: For he says plainly in the Affair of the Lady *Pigouffe*, that the established Order in Episcopal Courts for Questions of Impotency, consists solely in visiting the two Parties.

FROM this establish'd Principle, namely, that Impotency must be founded by all lawful Ways, before we proceed to the *Triennium*, the Decrees of Parliament have drawn this Consequence, That when the Ecclesiastical Judge has undertaken to pursue Im-

Impotency by the ordinary Methods, he is cut off from having recourse to the triennial Cohabitation. This is the Doctrine of two Decrees reported by *Choppin*.

IN the Case of the former, there had been a Sentence of Dissolution after respective Visitations, and the Congress; and upon an Appeal thrown in by the Husband, an invalidating Sentence pass'd in the Metropolitan Court, which order'd the married Couple to dwell together a Year longer, to compleat the three Years. Upon this, the Wife appeals to the Parliament, who declare, that the Sentence of the Metropolitan was beyond his Jurisdiction, because the Frigidity being notorious from the Inspections and the Congress, the Parties were not in the Case of the general Rule of Chap. *Laudabilem*, but in the Case of the particular Exception, *nisi Frigiditas prius probari potuerit*.

THE Case of the second Decree is yet more apposite: After the Husband was visited, the Congress was order'd by the Official. The Husband appeals to the Metropolitan, who corrects the Sentence, and instead of the Congress, orders the *Triennium*. Upon this it was adjudged, that the Metropolitan had exceeded his Jurisdiction, because the first Judge having undertaken to discover the Impotency by the Congress; and that Method being sufficient for such Discovery, it was infringing the Canons to have recourse, in that Case, to the *Triennium*: And it was in this Infraction, wherein consisted the Abuse.

FROM hence I draw two Principles: One, that the *Triennium* is not allowable, but when all other Proofs are wanting; the other, that according to our Manners and Usage, the Trial of three compleat Years is not necessary; since the Husbands, condemned by those Decrees, were disappointed of the Residue of their three Years: Which is directly opposite to the Maxim pleaded by those of the other Side, namely, that without a Cohabitation of three compleat Years, it is

impossible to know whether there is Frigidity, And this Maxim is likewise contrary to the Canons, since the Canons suppose that the Frigidity may be ascertain'd before the three Years; otherwise they would not have admitted that Exception, *si frigidityas prout probari non potuerit*.

APPLYING these Principles to the present Cause, I conclude from the first, that since the Impotency of Monsieur de Gesvres may be known, provided you will to his two Inspections add that of his Spouse, it would be transgressing your Jurisdiction, and contravening the Rules of the Church, to neglect this Proof, and run headlong into the *Triennium*.

FROM the second Principle I conclude, that it signifies little, the Marquis's not having been three Years with his Wife, if we can come to the Knowledge of his Frigidity, by visiting the Person of his Wife.

BUT to these two Principles I add a third, no less manifest, which, as you shall by and by see, will bear a just Application to the Cause; namely, that when once an Ecclesiastical Judge has set himself to discover Impotency by the way of Searchers, he is not at Liberty to quit that Way to make use of the *Triennium*; at least, he cannot do it till after all Hope is lost of getting any Light from the Searcher's Art. This you see was condemn'd by the second of the two Decrees above quoted. The ordinary Official had begun by the way of Searchers, and then with the Congress. The Metropolitan goes out of this Road into that of the *Triennium*. The Decree of the superior Court declares, that he exceeded his Jurisdiction, and that it was abusive; because when once a Judge has pitch'd upon the Manner of Investigation for the Discovery of Impotency, he is oblig'd to pursue it to the End; and that to chop and change from one Proof to another, without going through with any, is a Levity unbecoming a Judge, and which likewise by a second Sentence takes away the Right that was acquir'd by the first.

NOW,

NOW, the Parties are exactly in this Case; and what makes them so, is the Sentence of the 4th of *March* last: For I reckon for nothing that which order'd the first Visitation, because it is purely a thing of Course, and prejudices nothing. But for that of the 4th of *March*, which was given after a full Knowledge of the good Conformation of the Husband, it expressly declares, that the Impotency must be divid'd into by the Means of the Searchers, and consequently that there's no departing from this Method till it is totally gone through with; which it is not, when the Inspection of the Wife may enable the Searchers to judge definitively of the Impotence.

THIS Argument can receive no Answer, but by saying, that the Inspection of the Wife concludes nothing, even tho' the Husband cannot prove his Potency. But to talk thus, is arraigning the Canons which have introduc'd the Inspection of the Wife; it is censuring all the Canonists who approve of it, and the Usage which admits thereof, as has been demonstrated by so many Precedents, cited as well in Court as in printed Papers. A Man should not be so fond of his Sentiments, as to prefer them to those of all ancient and modern Authors, who have universally own'd the Inspection of the Wife to be a lawful Proof, not only admittable, but actually admitted into Usage.

AGAIN, we had Reason to distinguish, after *Hoftiensis* and the most eminent Canonists, between the Chapter *Laudabilem* made for Frigidity, and the Chapter *Littera* made for Sorcery.

IN the former, three Years are allow'd for Tryal to a Husband, who promises something from his Person, and who demands Time to see what he can do in it. In the latter, the three Years are allow'd to the Judge for discovering whether the Impotency be Sorcery, and as such may go off; or whether it be Frigidity, and as such continue for ever. It is in the second Case, and not in the first, that the three
Years

Years are strictly to be observ'd, as has been prov'd by the preceding Writings; yet they who carp at those Writings, confound the two Cases together, without answering the Reasons and Authorities brought to demonstrate the Difference there is between a Probation granted to a Husband upon his Request, and a Proof which the Law points out to the Judge as the Light he is to follow. There is a Difference between *Probation* and *Proof*. The first is for the Case of Frigidity, without any Suspicion of Sorcery; and that is our Case; and thus the Probation must be demanded by the Party. The second is for the Case of suspected Sorcery; and then the Proof by three Years is necessary for the Judge, whether the Husband demands it or no.

To conclude; we are in the Case of the Probation, and not of the Proof, since here there is neither Suspicion, nor Shadow, nor Appearance of Sorcery; therefore if there were any room for the *Triennium*, Monsieur de *Gesures* must have demanded it; and to obtain it, it would have been necessary for him to have given at least some slight Symptoms of Potency, according to the Opinion of *Hotman* and *Tagareau*. Now, we are very far from all these Cases: M. de *Gesures* prays no Probation; he well knows it would do him no good, as likewise that such a Demand would look odd in a Husband who says he has consummated. Furthermore, Monsieur de *Gesures* gives not the least Token of Potency, the smallest *Indicium*, the weakest Beginning; consequently his Request would not be admitted, even though he should ask it.

M. BEGON, *Advocate.*
M. BENARD, *Proctor.*



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